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Attorneys for Plaintiffs CARL SCHLACHTE
 and NANCY SCHLACHTE

**IN THE UNITED STATES COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 (OAKLAND BRANCH)**

CARL SCHLACHTE and)	Case No.:
NANCY SCHLACHTE,)	
Plaintiffs,)	COMPLAINT
)	DEMAND FOR JURY TRIAL
vs.)	
)	
UNITED STATES OF AMERICA,)	
Defendant.)	
_____)	

1. Plaintiffs, Carl Schlachte and Nancy Schlachte by their undersigned attorney, brings this action against Defendant the United States of America.

Parties

2. Plaintiffs, Carl Schlachte and Nancy Schlachte are husband and wife and are citizens of the United States who reside at 906 Gray Fox Circle, Pleasanton, in Alameda County, California, 94566.

3. The Defendant is the United States of America.

Jurisdiction

4. This is a suit arising under the laws of the Internal Revenue Code for the refund of income taxes and interest erroneously and illegally assessed against and collected from the Plaintiffs.

5. Jurisdiction is conferred upon the Court by 28 U.S.C. §1346(a) (1).

6. Venue is appropriate under 28 U.S.C. § 1391(e).

Summary of Claim

7. The IRS incorrectly and wrongfully treated a loan and pledge of stock as collateral between the Schlachtes and Derivium as a sale of the stock and, consequently, the IRS incorrectly and wrongfully assessed taxes, interest and penalties against Schlachte and caused Schlachte to incur additional damages.

8. Carl Schlachte, on the advice and recommendation of his financial advisors and in reliance on representations by Derivium, entered into what he reasonably and in good faith believed were two legitimate non-recourse loans with Derivium.

1 The Schlachtes borrowed 90% of the value of certain shares of ARM Holdings
2 PLC (ARM) they owned at the time and pledged 100% of the same ARM shares as
3 collateral for the loans. Under the terms of the Master Loan Agreement (Master
4 Agreement), Derivium had the right to sell the pledged stocks, but was required to
5 return to the Schlachtes at the end of the three year loan period the same number of
6 shares as had been pledged, provided the Schlachtes paid in full all outstanding
7 loan balances, including accrued interest. If the Schlachtes failed to repay the loan
8 and interest at the end of the three year period, the pledged stock would be
9 forfeited, but Derivium would have no further recourse.
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13 9. The Schlachtes entered into the Master Agreement based on their reasonable
14 and good faith reliance and believe on representations by Derivium and
15 Schlachte's own financial advisors, that Derivium intended and was able to fulfill
16 its obligation to return the collateral at the end of the three year loan period. The
17 transaction was represented to the Schlachtes by Derivium and the Schlachtes'
18 financial advisors as an attractive hedging strategy and the Schlachtes were
19 induced to enter into the transaction on that basis. The Schlachtes were informed
20 by Derivium and the Schlachtes' financial advisors and, therefore, believed that
21 Derivium would be able to fulfill its obligation to return the collateral by engaging
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1 in a complex, proprietary, secret formula for hedging, developed by Dr. Charles D.
2 Cathcart, a principal of Derivium's.

3
4 10. Derivium concealed and misrepresented material facts from the Schlachtes
5 in order to induce the Schlachtes to enter into the Master Agreement. Derivium
6 never intended to return the pledged stock to the Schlachtes at the end of the loan
7 period, nor did Derivium ever intend to return to the Schlachtes the same number
8 of shares as had been pledged. Derivium sold all of the pledged stock before the
9 loan was funded. Derivium used 90% of the sale proceeds of the pledged stock to
10 fund the loan, but then converted the remaining 10% of the loan proceeds for its
11 own use and never engaged in any hedging strategy. Derivium committed this
12 same theft and conversion in other loan transactions with other borrowers similar
13 to the Schlachtes. As a result of the theft and conversion of these sale proceeds by
14 Derivium, Derivium defaulted on its obligations to return the collateral at the end
15 of the loan period in many similar loan transactions.

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20 11. If Derivium and the Schlachtes' own financial advisors had not concealed
21 and misrepresented material facts from the Schlachtes and if the Schlachtes'
22 financial advisors had not failed to perform their due diligence, as alleged herein,
23 the Schlachtes would not have entered into the Master Agreement. If the
24 Schlachtes had known the true facts, they would not have borrowed from Derivium
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1 or pledged their ARM stock to Derivium, or they would have entered into a
2 different hedging strategy with someone else, or they would have sold the stock
3 themselves, in which case they would have received 100% of the sale price instead
4 of only 90%.

6 12. The Schlachtes did not begin to discover these omissions and
7 misrepresentations of facts by Derivium and Schlachtes' own financial advisors
8 until after the end of the three year loan period and after they received notice from
9 the IRS and the California Franchise Tax Board (CFTB) that these taxing
10 authorities had decided to treat the Derivium transaction as a sale of stock, not as a
11 loan and pledge of stock as security. The IRS claimed that the Schlachtes owed
12 overdue capital gains tax due to the alleged sale of the ARM stock.

16 13. The determination by the IRS and CFTB that the Derivium transaction is a
17 sale, rather than a loan and pledge of security, is incorrect. Under the terms of the
18 Master Agreement, the Schlachtes' stock was only pledged as security, not sold.
19 Derivium was obligated to return the collateral at the end of the term. At all times
20 mentioned herein, the Schlachtes believed and relied on the fact that the Derivium
21 transaction is a loan. The fact that Derivium sold all of the stock, funded the loan
22 with 90% of the sale proceeds and converted the remaining 10% of the proceeds to
23 its own use with no intention to hedge the stock or return the stock to the
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1 Schlachtes, constitutes a theft and fraud upon the Schlachtes, but it does not cause
2 the Derivium transaction to be treated as a sale.

3 14. Because the IRS is not certain of the validity of its own position, the IRS has
4 also decided to tax the transfer of the same stock at the termination of the loan as a
5 sale. The IRS acknowledges that the positions are a "whipsaw" as the acceptance
6 of one position excludes the other. However, the IRS has decided to levy the tax
7 twice once based on each theory and has also decided to collect the double tax
8 even though it recognizes it will collect more than the taxpayer owes.
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12 **Factual Allegations**

13 15. Derivium Capital, LLC (herein "Derivium") is a limited liability company
14 organized and existing under the laws of the State of South Carolina.
15

16 16. Plaintiff is informed and believes that at all times herein mentioned,
17 Derivium was in the financial services business, marketing and administering a
18 proprietary secured stock loan. Specifically, Plaintiff is informed and believes that
19 from 1998 through 2002 Derivium marketed what is known as the "90% Stock
20 Loan," a loan transaction whereby the borrower pledges certain stock to secure a
21 loan valued at 90% of the market value of the stock. Plaintiff is further informed
22 and believes that the loan would typically mature after three years with interest
23 accruing at 10% to 12% per annum. At the maturity of the loan the borrower
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1 would have the option of paying off the loan plus interest accrued and receiving
2 back the same number of shares of stock pledged, or (in the event the value of the
3 stock was less than the loan principal plus interest) the borrower could terminate
4 the transaction without any further obligation.
5

6 17. The 90% Stock Loan offered by Derivium enabled the borrower to enjoy the
7 benefits of the appreciation of the borrower's stock, while hedging against a
8 potential downturn in the market.
9

10 18. Plaintiff is informed and believes that Derivium marketed approximately
11 1,700 such 90% Stock Loans between 1998 and 2002.
12

13 19. On or about June 14, 2000 the Schlachtes were advised by their financial
14 advisor, Farallon Advisors (now ClearPath Capital Partners), that they would
15 benefit by engaging in a Derivium 90% Stock Loan.
16

17 20. Accordingly, on or about June 26, 2000 the Schlachtes and Derivium entered
18 into a Master Agreement to Provide Financing and Custodial Services (herein
19 "Master Agreement"). A true and correct copy of the Master Agreement dated June
20 14, 2000 is attached hereto as Exhibit A and incorporated herein.
21

22 21. Plaintiff is informed and believes that the Master Agreement between
23 Derivium and the Schlachtes is the same type of "90% Stock Loan" marketed by
24 Derivium to the approximately 1,700 other borrowers, as alleged herein.
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1 22. The Schlachtes entered into two loans based on the same Master Agreement.
2 The terms of each loan were set forth in loan term sheets, which were attached as
3 separate Schedules to the Master Agreement and incorporated therein.
4

5 23. The Schlachtes took out their first loan (Loan Number 34462701-2-8230)
6 pursuant to the Master Agreement on August 22, 2000. Exhibit B. For this first
7 loan, the Schlachtes agreed to pledge as security 8,860 shares of stock they owned
8 in ARM Holdings PLC (ARM). The amount of loan principal was \$270,942.75,
9 which was equal to 90% of closing market value of the ARM stock pledged on
10 August 24, 2000 as calculated by Derivium. Exhibit C. A true and correct copy of
11 Schedule A-2 to said Master Agreement evidencing the terms of this first loan is
12 attached hereto as Exhibit D and incorporated herein. The loan term was three
13 years and the loan provided for no recourse beyond the shares pledged.
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18 24. On or about August 24, 2000 the Schlachtes signed additional loan
19 documents pledging 66,266 shares of ARM Holdings Stock to Derivium Capital
20 with a loan principal of \$2,025,392.18 for this transaction. As before, the loan
21 principal was equal to 90% of closing market value of the ARM stock pledged on
22 August 24, 2000 as calculated by Derivium, the term was three years and the loan
23 provided for no recourse beyond the shares pledged. (Exhibit E, Exhibit F, Exhibit
24 G).
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1 25. On August 28, 2000, two wire transfers, the first for \$1,560,000 and the
2 second for \$736,334.93 were made to the Schlactes representing the total
3 \$2,296,334.93 due to clients. Exhibit H. This represented \$270,942.75 from Loan
4 Number 34462701-2-8230 plus \$2,02,392.18 from Loan Number 34462701-1-
5 6300.
6

7
8 26. Before April 15, 2001, Plaintiffs Carl Schlachte and Nancy Schlachte, filed a
9 timely joint federal income tax return (Form 1040) for the calendar year 2000. This
10 return reported a total tax liability of \$92,899. Because the Schlachtes withholding
11 and other payments exceeded \$92,899 they received a refund. (Exhibit I).
12

13 27. On approximately July 10, 2003, the Schlachtes were notified that the loan
14 term had matured for the first Derivium Transaction and surrendered the 8,860
15 shares of ARM holding in satisfaction of the loan. (Exhibit J, Exhibit K)
16

17 28. On approximately August 24, 2003, the Schlachtes were notified that the
18 loan term had matured for the second Derivium transaction and surrendered the
19 66,266 shares of ARM Holdings in satisfaction of the loan. (Exhibit L, Exhibit M,
20 Exhibit N).
21

22 29. By February 11, 2004, the Schlachtes had been contacted by the California
23 Franchise Tax Board (CFTB). (Exhibit O) At this time, the CFTB took the
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1 position, that the Derivium Transactions were sales on the date the loans were
2 signed.

3
4 30. The Internal Revenue Service has also taken the position that the Derivium
5 90% Stock Loans were sales.

6
7 31. The CFTB and IRS are incorrect in their assertion that the Derivium 90%
8 Stock Loans were sales.

9
10 32. The IRS is required to honor a contract for a transaction and its
11 characterization as a loan or other label shown by the contract terms where (1) the
12 parties are unrelated, arms-length parties, (2) there is valid consideration for the
13 contract, (3) the parties characterize the interest as a loan (or sale), and (4) the
14 parties follow substantially the formalities of the contract, whatever those
15 provisions may be.
16

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18 33. The loan contract between Derivium and the Schlachtes satisfies all of the
19 requirements necessary to be characterized as a loan, for the following reasons,
20 among others:
21

- 22 • The loan contract was entered into by two independent, arms-length,
23 unrelated parties and sets forth the rights and obligations of each party.
24
- 25 • The loan contract is supported by consideration from the Schlachtes in
26 the form of providing stock pledged as collateral, the loan advance and
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1 the promises by Derivium of the return of collateral and the performance
2 of hedging transactions adequate to guarantee that the collateral could be
3 returned.
4

- 5 • Derivium and the Schlachtes characterize the Master Agreement as a loan
6 and incorporate in it the “loan term sheets” setting forth the interest rate
7 and other terms.
8
- 9 • The Schlachtes followed the terms of the contract and assumed that
10 Derivium did also.
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12 34. The IRS exceeded its legal authority and violated the law by disregarding
13 the plain meaning of the contract and the conduct of the parties, by
14 mischaracterizing the loan contract between Derivium and the Schlachtes as a sale
15 rather than a loan, and by notifying the Schlachtes that they were not permitted to
16 treat the Derivium transaction as a loan.
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19 35. The State of California advanced the argument that the Master Agreement
20 was a sale, the Superior Court of California granted summary judgment against the
21 State of California. The court held that the Master Agreement and arrangement
22 were not a sale, but a loan.
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25 36. As a result of the IRS’s and CFTB’s mischaracterization of the Derivium
26 transaction as a sale, which the Schlachtes nevertheless dispute, the Schlachtes
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1 were subsequently required to re-characterize the loan and report the sales of the
2 75,126 shares of ARM Holdings on their California Income Tax returns.

3
4 37. To obtain California Amnesty and in reliance on the information provided to
5 them by the California Franchise Tax Board, the Schlachtes filed amended tax
6 returns showing the transactions in Arm Holdings stock as sales occurring in 2000.
7
8 (Exhibit P)

9 38. The Schlachtes resubmitted amended returns for the 2000 and 2003 tax year
10 removing the income from the Derivium Transactions as sales from 2000 and
11 recognizing the income in 2003 when the shares were forfeited. (Exhibit Q, Exhibit
12 R)
13

14
15 39. On June 26, 2006, Revenue Officer Elain Li, issued a full disallowance of
16 the claimed refund for the 2000 tax year. (Exhibit S).

17
18 40. On December 22, 2005, Jack Estoll, an appeals team Manager, denied the
19 request for refund of tax for 2000. (Exhibit T).

20
21 41. In contradiction to his decision that the sale should be taxed in 2000, Mr.
22 Estoll caused the 2003 Amended 1040 to be processed and knowingly caused the
23 Schlachtes to be taxed twice on the same transaction. (Exhibit U).
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1 42. Mr. Estoll advised that he would not allow the Schlachtes to withdraw the
2 2003 return unless they submitted a closing agreement preventing them from
3 contesting the 2000 liability.
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5 43. Mr. Estoll advised that unless the Schlachtes' signed a Closing Agreement
6 they would be subjected to collection to tax for both 2000 and 2003 on the same
7 transactions and that collection would be pursued for the tax as to both years. The
8 Schlachtes, through their legal counsel, responded by advising Mr. Estoll that this
9 would be an attempt to collect a debt that the collector knew was not owed, a
10 violation of the Fair Debt Collection Practices Act for a debt collector and a
11 violation of 26 U.S.C. 7433.
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15 44. Mr. Estoll's successor, Linda Hite, confirmed the IRS position that the 2003
16 liability would not be withdrawn unless the Schlachtes sent written assurance that
17 the matter would not be pursued in court. However, Ms. Hite represented that the
18 revenue officer had been notified that the liability in 2003 was a duplication of the
19 2000 liability and that the IRS could not legally collect tax on the same income
20 twice. (Exhibit V).
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23 45. Contrary to Ms. Hite's assertion the IRS has pursued collection of both
24 amounts and has announced the intention to continue to do so. (Exhibit W).
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1 46. On approximately June 19, 2007 the Schlachtes paid the tax due for the 2000
2 tax year. (Exhibit X)

3 47. The IRS continues to pursue collection of the tax in 2003 even though the
4 IRS acknowledges that this is a duplicate tax on the Derivum Transactions, the tax
5 can be due in only one year, the tax has been paid for the highest year, the
6 Schlachtes will not owe additional tax if 2000 is determined to be the correct
7 reporting year for the Derivum Transactions, or will be owed a refund if 2003 is
8 found to be the correct year.
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12 48. As grounds for recovery, Schlachtes state that they are entitled to a refund of
13 taxes paid with interest in respect to the 2000 1040 of \$842,782 because the
14 Derivum Transactions were either a loan as shown by the documents or, in the
15 alternative, a theft. Under either theory the Schlachtes would not record income
16 from the transaction in 2000.
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19 49. The Internal Revenue Service erred by impermissibly subjecting the
20 Derivum transactions to income tax twice, once in 2000 and a second time in
21 2003.
22

23 50. The Internal Revenue Service erred by attempting to collect tax on the
24 Derivum transactions twice, once in 2000 and a second time in 2003.
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1 Schlachtes are the sole owners of their claim and have made no assignment of such
2 claim.

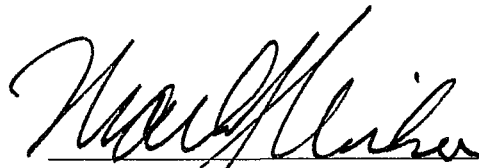
3 WHEREFORE, Plaintiffs pray for judgment against the Defendant in the
4 amount of \$842,782, or such greater amount as they may be entitled to, together
5 with costs and interest as allowed by law, and for such further relief as the Court
6 may deem appropriate.
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9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs demand a jury trial on all issues raised by the Complaint.
11

12
13 Dated this 20th day of December, 2007.
14

15 ISAACSON & WILSON, P.S.

16
17 
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19 Mark J. Wilson, Cal. Bar No. 96985

20 701 5th Avenue, Suite 5810

21 Seattle, Washington 98104

22 Tel: (206) 448-1011

23 Fax: (206) 448-1022

24 Attorney for Plaintiffs CARL SCHLACHTE
25 and NANCY SCHLACHTE
26
27
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EXHIBIT A



**DERIVUM
CAPITAL**

**MASTER AGREEMENT TO PROVIDE
FINANCING AND CUSTODIAL SERVICES**

This Master Agreement (hereinafter "Agreement") is entered into this 14th day of June, 2000 between Derivium Capital, LLC, located in Charleston, SC ("DC") and Carl Schlachte, located in Mountain View, CA ("Client"). This Agreement is made for the purpose of engaging DC to provide or arrange financing(s) and to provide custodial services to the Client, with respect to certain properties and assets ("Properties") to be pledged as security, the details of which financing and Properties are to be set out in loan term sheets and attached hereto as Schedule(s) A ("Schedule(s) A").

1. SERVICES TO BE PROVIDED BY DC

DC is hereby appointed Custodian of the Properties and authorized to act on behalf of the Client with respect to the Properties for the purposes of:

- a) Providing or arranging financing by way of one or more loans (the "Loan(s)") in accordance with terms to be agreed upon by the parties and set out in loan term sheets and attached hereto as Schedule(s) A.
- b) Holding cash, securities, or other liquid assets (the "Client Liquid Assets") on behalf of the Client and acceptable to DC as collateral.
- c) Voting shares and receiving dividends or interest on securities held as collateral.

2. AMOUNT & TERMS OF FINANCING

The terms of each Loan are herein contained in the attached Schedule(s) A. The exact loan amounts will be based upon loan-to-value considerations and the results of due diligence. The net loan proceeds may be distributed at one time or on sequential dates, as instructed by Client.

3. FUNDING OF LOAN

The contemplated Loan(s) will be funded according to the terms identified in one or more term sheets, which will be labeled as Schedule A, individually numbered and signed by both parties, and, on signing, considered a part of and merged into this Master Agreement. The Client understands that by transferring securities as collateral to DC and under the terms of the Agreement, the Client gives DC and/or its assigns the right, without requirement of notice to or consent of the Client, to assign, transfer, pledge, repledge, hypothecate, rehypothecate, lend, encumber, short sell, and/or sell outright some or all of the securities during the period covered by the loan. The Client understands that DC and/or its assigns have the right to receive and retain the benefits from any such transactions and that the Client is not entitled to these benefits during the term of a loan. The Client agrees to assist the relevant entities in completing all requisite documents that may be necessary to accomplish such transfers.

4. RETURN OF CLIENT COLLATERAL

DC agrees to return, at the end of the loan term, the same number of shares of the same securities received as collateral (as conditioned in the next sentence), as set out and defined in Schedule(s) A attached hereto, upon the Client satisfying in full all outstanding loan balances, including accrued interest. Said collateral shall reflect any and all stock splits, conversions, exchanges, mergers, or other distributions, except dividends credited toward interest due.

5. REGISTRATION AND SUBCUSTODIANS

DC may place the Client Assets i) with any domestic or foreign depository or clearing corporation or system that provides handling, clearing or safekeeping services; ii) with the issuer of a security in non-certificate form; iii) with any domestic or foreign bank or depository as subcustodian; and DC will pay the fees and expenses of the foregoing entities.

DC _____

MLA-1

Client(s) CS _____



**DERIVUM
CAPITAL**

**MASTER AGREEMENT TO PROVIDE
FINANCING AND CUSTODIAL SERVICES**

6. CLIENT REPRESENTATIONS & WARRANTIES

Client agrees to provide information necessary to the contemplated transactions in a timely, complete, and accurate manner. The Client further represents and warrants that the collateral submitted is duly owned by Client, is freely transferable, and that any and all liens against the collateral have been disclosed to DC. Client further warrants that all statements and associated documentation provided in connection with the application for any Loan(s) are true and complete and do not omit any facts or information material to the evaluation of the loan request, and that loan proceeds will not be used to purchase margin stock per Regulation U of the Federal Reserve Board of Governors of the United States.

7. INDEMNITY

DC makes no warranties regarding DC's ability to fund or find a funder. Final terms of each Loan(s) shall be negotiated and set out in separate Loan term sheets to be attached hereto as Schedule(s) A. Neither party is bound to any one Loan until both parties have i) executed both the MLA and the Schedule A for that Loan; ii) the Client has delivered acceptable collateral shares; and iii) DC has initiated the establishment of hedging transactions for that Loan.

8. SOUTH CAROLINA LAW TO APPLY

This Agreement shall be construed under and in accordance with the laws of the State of South Carolina, and all obligations of the parties hereunder shall be deemed to have been performed in Charleston, South Carolina.

9. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and or assigns except as otherwise expressly provided herein.

10. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement.

11. FURTHER ACTS

In addition to the acts contemplated herein, the parties hereto agree to perform or cause to be performed, any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

12. ARBITRATION

The parties to this Agreement, and their respective employees, officers, principals, directors, attorneys and agents hereby agree to submit to arbitration any claims, disputes and controversies between them relating to this agreement. It is further agreed that such arbitration shall proceed in Charleston, South Carolina, and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Arbitration shall be before a single neutral arbitrator who shall be an attorney who has practiced in the area of commercial law for at least ten years or a retired judge at the District court or Appellate court level, selected in accordance with the rules of the Commercial Rules of the AAA and shall proceed under the Expedited Procedures of these rules. Each party shall bear its own costs and expenses and an equal share of the arbitrator's fees and administrative fees of arbitration.

DC _____

MLA-2

Client(s) GA



**DERIVUM
CAPITAL**

**MASTER AGREEMENT TO PROVIDE
FINANCING AND CUSTODIAL SERVICES**

13. GENERAL

- a) This Agreement constitutes the sole agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the subject matter. This Agreement may be amended only by a mutual agreement of the parties in writing specifically referencing this Agreement.
- b) This Agreement may be terminated by either party at any time prior to the funding of a loan, in whole or in part and as cash or as credit to cover any existing obligations.
- c) Signed copies of this Agreement and other related documents may be transmitted by facsimile and, on receipt, shall be treated as originals and legally binding.
- d) There are no other representations, warranties, collateral agreements or conditions, which affect this Agreement other than as expressed herein and in the attached schedules.

14. NOTICE BY THE PARTIES

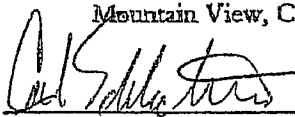
- a) Any notice to be given hereunder by either party may be effected verbally or in writing and, if verbal, confirmed in writing within twenty-four hours by facsimile or by overnight mail.
- b) Any tender, delivery, or notice made by facsimile shall be deemed received as of transmission; and any tender, delivery or notice made by mail shall be deemed received as of mailing.
- c) The Client's official address and telephone and facsimile numbers for notifications regarding this Agreement and related loan transactions are:
1200 Charleston Road, Mountain View, CA
Tel: 650-312-9850
Fax: 650-312-9056
- d) DC's official address and telephone and facsimile numbers for notifications regarding this Agreement and related loan transactions are:
Parkshore Centre, Suite 125, One Poston Road, Charleston, SC 29407
Tel: (843) 556-6211
Fax: (843) 556-3434

For: Derivium Capital, LLC
Charleston, SC

For: Carl Schlachte
Mountain View, CA

Charles D. Cathcart
President

Date


Carl Schlachte

26 JUN-00
Date

MLA-3



**DERIVUM
CAPITAL**

**SCHEDULE A-1 REV 2 8/21/00
PROPERTY DESCRIPTION AND LOAN TERMS**

This Schedule A (Loan Number: _____), dated June 14th, 2000, is executed in connection with the Master Agreement to Provide Financing and Custodial Services entered into between Derivium Capital, LLC ("DC") and Carl Schlachte ("Client") on June 14th, 2000.

1. **Property Description:** 66,266 ADRs of ARM Holdings PLC (ARMHY).
2. **Estimated Value:** \$2,264,088.20 (as of 8/21/00, at \$34 1/6 per ADR).
3. **Anticipated Loan Amount:** 90% of the market value on closing, in part or in whole.
4. **Interest Rate:** 10.50%, compounded annually, accruing until and due at maturity.
5. **Cash vs. Accrual:** All Dividends will be received as cash payments against interest due, with the balance of interest owed to accrue until maturity date.
6. **Term:** 3 years, starting from the date on which final loan proceeds are delivered on the loan transaction.
7. **Amortization:** None.
8. **Prepayment Penalty:** 3 year lockout, no prepayment before maturity.
9. **Margin Requirement:** None, beyond initial collateral.
10. **Non-Callable:** Lender cannot call loan before maturity.
11. **Non-Recourse:** Non-recourse to borrower, recourse against the collateral only.
12. **Renewable:** The loan will renew at borrower's request for an additional term or terms, on the maturity date or dates, within DC's prevailing conditions and terms for loans at the time of renewal. On the renewal of any loan for which the collateral value on maturity does not equal or exceed the payoff amount divided by 0.9, there will be a renewal fee, which will be calculated as a percentage of the original collateral value. The percentage will vary according to the market capitalization of the securities at the time of the renewal, as follows: Large Caps at 4.5%, Mid Caps at 5.5%, Small Caps at 6.5%.
13. **Closing:** Upon receipt of securities and establishment of DC's hedging transactions.

For: Derivium Capital, LLC
Charleston, SC

For: Carl Schlachte
Mountain View, CA

Charles D. Cathcart
President

Date

Carl Schlachte

Date

8/22/00



**DERIVUM
CAPITAL**

**SCHEDULE A-2
PROPERTY DESCRIPTION AND LOAN TERMS**

This Schedule A (Loan Number: _____), dated August 15th, 2000, is executed in connection with the Master Agreement to Provide Financing and Custodial Services entered into between Derivium Capital, LLC ("DC") and Carl Schlachte ("Client") on June 14th, 2000.

1. **Property Description:** 8,860 ADRs of ARM Holdings PLC (ARMHFV).
 2. **Estimated Value:** \$274,660.00 (as of 08/15/00, at \$31 per ADR).
 3. **Anticipated Loan Amount:** 90% of the market value on closing, in part or in whole.
 4. **Interest Rate:** 10.50%, compounded annually, accruing until and due at maturity.
 5. **Cash vs. Accrual:** All Dividends will be received as cash payments against interest due, with the balance of interest owed to accrue until maturity date.
 6. **Term:** 3 years, starting from the date on which final loan proceeds are delivered on the loan transaction.
 7. **Amortization:** None.
 8. **Prepayment Penalty:** 3 year lockout, no prepayment before maturity.
 9. **Margin Requirement:** None, beyond initial collateral.
 10. **Non-Callible:** Lender cannot call loan before maturity.
 11. **Non-Recourse:** Non-recourse to borrower, recourse against the collateral only.
 12. **Renewable:** The loan will renew at borrower's request for an additional term or terms, on the maturity date or dates, within DC's prevailing conditions and terms for loans at the time of renewal. On the renewal of any loan for which the collateral value on maturity does not equal or exceed the payoff amount divided by 0.9, there will be a renewal fee, which will be calculated as a percentage of the original collateral value. The percentage will vary according to the market capitalization of the securities at the time of the renewal, as follows: Large Caps at 4.5%, Mid Caps at 5.5%, Small Caps at 6.5%.
 13. **Closing:** Upon receipt of securities and establishment of DC's hedging transactions.
- For: Derivium Capital, LLC
Charleston, SC
- For: Carl Schlachte
Mountain View, CA

Charles D. Cathcart
President

Date

Carl Schlachte

Date

EXHIBIT B

Mr. Patrick Kelley
Operations Manager
Derivium Capital, LLC
Parkshore Centre
One Poston Road, Suite 125
Charleston, SC 29407

Re: Hedged Valuation Authorization

Dear Mr. Kelley:

This letter authorizes Derivium Capital ("DC") to proceed with hedging transactions on my/our stock collateral as detailed on Schedule A- 2 dated 8/15/00 in order to achieve the following objective:


Please establish a minimum average hedged valuation of \$33 (Per instructions from Farallon Advisors) per share for my/our #8860 of shares in ARM Holdings PLC "ARMHY"

This Authorization supercedes all previous verbal and/or written authorizations, if any, with regard to my objective for a minimum average hedged valuation for this loan transaction.

If I/we transfer debt with any of the collateral, I/we understand that, regardless of the aforementioned instruction, DC will proceed with hedging transactions on enough collateral to: 1) provide adequate loan proceeds to cover the debt submitted, or 2) provide a minimum of \$90,000 in gross loan proceeds, whichever is greater. I/we understand that DC will then continue implementing hedging transactions on the balance of the collateral, if any, only at such time as the overall parameters established in this Authorization can be met or exceeded, or until I/we authorize DC to proceed otherwise.

I/we also understand that if I/we choose to modify these parameters, in any way, said modifications must be provided in writing to an authorized DC representative.

Sincerely,


Carl Schlachte

8/22/00
Date

EXHIBIT C



Operations Office
Parkshore Centre, Suite 125
One Poston Road, Charleston, SC 29407
Tel 843-556-6211 Fax 843-556-3434
Toll Free 1-877-DERIVUM (1-877-337-4848)

**DERIVUM
CAPITAL**

ACTIVITY CONFIRMATION

Page 1 of 1

Carl Schlachte
1200 Charleston Road
Mountain View, CA

REPORT DATE: 8/24/00
LOAN AGREEMENT DATE: 6/14/00
CLIENT NUMBER: 34462701
LOAN NUMBER: 34462701-2-8230

SECURITIES HEDGED to date:

Original Valuation:

\$292,380.00

Date	Symbol	Shares Hedged	Hedged Value Per Share	Shares Remaining	Hedged Value
8/24/00	ARMHY	8,860	33.97827	0	\$301,047.50

Projected Loan Amount:

\$263,142.00

Total Hedged Value of Loan Collateral

\$301,047.50

Interest Rate:

10.50%

Actual Loan Amount at 90% of Hedged Value

\$270,942.75

Loan Term:

3 years

SUMMARY:

Amount advanced to client to date:	\$0.00
Net due client as a result of hedging activities to date:	\$270,942.75
Distribution by broker/dealer to client's broker/dealer account:	\$0.00
Distribution by Derivium to client's designated destination:	\$270,942.75
Date scheduled for transfer of amount due:	8/28/00

This statement reflects the status of your Derivium Capital, LLC loan as of the date above. Any discrepancy between this statement and your understanding or your instructions and provisions of the Master Agreement governing your loan should be reported to Derivium Capital, LLC as soon as possible and no later than five business days from receipt of this statement. If you have any questions regarding this document, please contact the Derivium Capital LLC's Operations Office.

EXHIBIT D

TOTAL P. 01

DERIVUM
CAPITALSCHEDULE A-2
PROPERTY DESCRIPTION AND LOAN TERMS

This Schedule A (Loan Number: _____), dated August 15th, 2000, is executed in connection with the Master Agreement to Provide Financing and Custodial Services entered into between Derivium Capital, LLC ("DC") and Carl Schlachte ("Client") on June 14th, 2000.

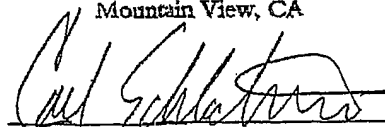
1. **Property Description:** 8,860 ADRs of ARM Holdings PLC (ARMHY).
2. **Estimated Value:** \$274,660.00 (as of 08/15/00, at \$31 per ADR).
3. **Anticipated Loan Amount:** 90% of the market value on closing, in part or in whole.
4. **Interest Rate:** 10.50%, compounded annually, accruing until and due at maturity.
5. **Cash vs. Accrual:** All Dividends will be received as cash payments against interest due, with the balance of interest owed to accrue until maturity date.
6. **Term:** 3 years, starting from the date on which final loan proceeds are delivered on the loan transaction.
7. **Amortization:** None.
8. **Prepayment Penalty:** 3 year lockout, no prepayment before maturity.
9. **Margin Requirement:** None, beyond initial collateral.
10. **Non-Callible:** Lender cannot call loan before maturity.
11. **Non-Recourse:** Non-recourse to borrower, recourse against the collateral only.
12. **Renewable:** The loan will renew at borrower's request for an additional term or terms, on the maturity date or dates, within DC's prevailing conditions and terms for loans at the time of renewal. On the renewal of any loan for which the collateral value on maturity does not equal or exceed the payoff amount divided by 0.9, there will be a renewal fee, which will be calculated as a percentage of the original collateral value. The percentage will vary according to the market capitalization of the securities at the time of the renewal, as follows: Large Caps at 4.5%, Mid Caps at 5.5%, Small Caps at 6.5%.
13. **Closing:** Upon receipt of securities and establishment of DC's hedging transactions.

For: Derivium Capital, LLC
Charleston, SC

For: Carl Schlachte
Mountain View, CA

Charles D. Cathcart
President

Date


Carl Schlachte

Date

EXHIBIT E

Date: 26-JUN-00

Attn: Morgan Stanley / Solveig Mickelson
555 California St.
 City San Francisco State CA Zip 94101
 Tel: 650-234-5928 Fax: 650-234-5961

Please accept this as my/our instruction to transfer via DTC the following shares of common stock from my/our account (# 14-A3047) to:

J.C. Bradford & Co.

DTC #0765

For further credit to the account of : Derivium Capital, LLC

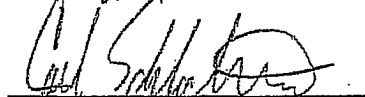
Account Number: 114-24884-18-426

<u>Company</u>	<u>Symbol</u>	<u>Shares</u>
ARM Holdings plc	ARMHY	<u>66,266</u>

If I/we choose to fax this instruction to initiate the transfer, I/we will also forward the original via regular mail request. You and J.C. Bradford & Co. have my/our authorization to inform Derivium Capital, LLC of matters related to this instruction.

If you have any questions, please contact me/us via telephone at 650-254-2801. Thank you for your prompt assistance in this matter.

Sincerely,



Signature

Carl Schlachte

Cc: Derivium Capital, LLC
 Operations Office
 Fax: 843-556-3434

EXHIBIT F

Mr. Patrick Kelley
Operations Manager
Derivium Capital, LLC
Parkshore Centre
One Poston Road, Suite 125
Charleston, SC 29407

Re: Hedged Valuation Authorization

Dear Mr. Kelley:

This letter authorizes Derivium Capital ("DC") to proceed with hedging transactions on my/our stock collateral as detailed on Schedule A-1 dated 6/27/00 in order to achieve the following objective:

Please establish a minimum average hedged valuation of \$33 (Per instructions from Farallon Advisors) per share for my/our #66,266 of shares in ARM Holdings PLC "ARMHY"

This Authorization supercedes all previous verbal and/or written authorizations, if any, with regard to my objective for a minimum average hedged valuation for this loan transaction.

If I/we transfer debt with any of the collateral, I/we understand that, regardless of the aforementioned instruction, DC will proceed with hedging transactions on enough collateral to: 1) provide adequate loan proceeds to cover the debt submitted, or 2) provide a minimum of \$90,000 in gross loan proceeds, whichever is greater. I/we understand that DC will then continue implementing hedging transactions on the balance of the collateral, if any, only at such time as the overall parameters established in this Authorization can be met or exceeded, or until I/we authorize DC to proceed otherwise.

I/we also understand that if I/we choose to modify these parameters, in any way, said modifications must be provided in writing to an authorized DC representative.

Sincerely,

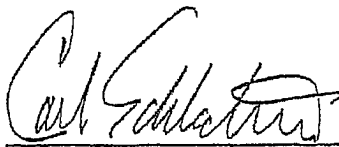

Carl Schlachte Date 8/21/00

EXHIBIT G



Operations Office
 Parkshore Centre, Suite 125
 One Poston Road, Charleston, SC 29407
 Tel 843-556-6211 Fax 843-556-3434
 Toll Free 1-877-DERIVUM (1-877-337-4848)

**DERIVUM
 CAPITAL**

ACTIVITY CONFIRMATION
 Page 1 of 1

Carl Schlachte
 1200 Charleston Road
 Mountain View, CA

REPORT DATE: 8/24/00
 LOAN AGREEMENT DATE: 6/14/00
 CLIENT NUMBER: 34462701
 LOAN NUMBER: 34462701-1-6300

SECURITIES HEDGED to date:

Date	Symbol	Shares Hedged	Hedged Value Per Share	Shares Remaining	Hedged Value
8/24/00	ARMHY	66,266	33.96064	0	\$2,250,435.76
Total Hedged Value of Loan Collateral					\$2,250,435.76
Actual Loan Amount at 90% of Hedged Value					\$2,025,392.18

Original Valuation:

\$2,186,778.00

Projected Loan Amount:

\$1,968,100.20

Interest Rate:

10.50%

Loan Term:

3 years

SUMMARY:

Amount advanced to client to date: \$0.00
 Net due client as a result of hedging activities to date: \$2,025,392.18
 Distribution by broker/dealer to client's broker/dealer account: \$0.00
 Distribution by Derivium to client's designated destination: \$2,025,392.18
 Date scheduled for transfer of amount due: 8/28/00

This statement reflects the status of your Derivium Capital, LLC loan as of the date above. Any discrepancy between this statement and your understanding or your instructions and provisions of the Master Agreement governing your loan should be reported to Derivium Capital, LLC as soon as possible and no later than five business days from receipt of this statement. If you have any questions regarding this document, please contact the Derivium Capital LLC's Operations Office.

EXHIBIT H

09/29/2000 17:23

0433003434

DERIVUM CAPITAL

[THE MECHANICS OF WEALTH]

29 September, 2000

Carl Schlachte
 5934 Corte Venado
 Pleasanton, CA 94566

Dear Mr. Schlachte:

Please find below a list of wire transfers sent to you from our account at First Union National Bank and their corresponding Fed. Reference Numbers:



**DERIVUM
 CAPITAL**

OPERATIONS

PARKSHORE CENTRE

ONE PISTON ROAD

SUITE 125

CHARLESTON SC 29607

TEL 877 DERIVUM

TEL 803 558 0271

FAX 843 555 2434

WWW.DERIVUM.COM

8/28/00 \$1,560,000.00 First Star Bank Fed Ref# 0829E3QPAA2C0120

8/28/00 \$ 736,334.93 Citibank Fed Ref# 0829E3QPAA2C0121

The funds wired to First Star Bank went to routing number 075000022 crediting account name Strong Municipal Money Market account number 112737090 for further benefit of Carl P. Schlachte, Jr. and Nancy C. Schlachte Joint Tenants account number 026-2600399889.

The funds wired to Citibank went to routing number 02100008-9 crediting account name Bear, Stearns Securities Corp. account number 092-53186, for further benefit of Carl P. Schlachte & Nancy L. Cannon Schlachte Trustees of The Schlachte Family Trust DTD 2/17/00 account number 646-01624-12.

Sincerely,

Catherine Knudsen
 Operations Associate

Document2

EXHIBIT I

3

PAGE NO-0001

IRS EMPLOYEE 2720751422

DATE REQUESTED 02-06-2007

PRINT DATE 02-06-2007

FORM NUMBER: 1040

TAX PERIOD: DEC 2000

TAXPAYER IDENTIFICATION NUMBER: [REDACTED]
 ** SPOUSE TAXPAYER IDENTIFICATION NUMBER: [REDACTED]

CARL P & NANCY C SCHLACHTE
 906 GRAY FOX CIR
 PLEASANTON

CA 94566-6921-066

BODC-SB BODCLC-W

<<<<POWER OF ATTORNEY/TAX INFORMATION AUTHORIZATION (POA/TIA) ON FILE>>>>

--- ANY MINUS BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: 1,031,101.78
 ACCRUED INTEREST: 173,747.06 AS OF 02-19-2007
 ACCRUED PENALTY: 0.00 AS OF 02-19-2007

ACCOUNT BALANCE
 PLUS ACCRUALS: 1,204,848.84

** EXEMPTIONS: 06 **FILING STATUS: MARRIED FILING JOINT
 ** ADJUSTED GROSS INCOME: 2,500,547.00
 ** TAXABLE INCOME: 2,439,807.00
 TAX PER RETURN: 92,899.00

** PER RETURN OR AS ADJUSTED

04-15-2001 RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)
 07-02-2001 PROCESSING DATE

TRANSACTIONS

CODE	EXPLANATION	DATE	MONEY AMOUNT (IF APPLICABLE)
150	RETURN FILED AND TAX ASSESSED 29222-145-33613-1	07-02-2001	92,899.00
806	CREDIT FROM WITHHELD TAXES	04-15-2001	65,990.00-
430	ESTIMATED TAX DECLARATION	04-12-2000	4,029.00-
430	ESTIMATED TAX DECLARATION	06-14-2000	4,625.00-
430	ESTIMATED TAX DECLARATION	09-17-2000	6,680.00-
430	ESTIMATED TAX DECLARATION	01-08-2001	5,000.00-
610	PAYMENT WITH RETURN	04-18-2001	26,909.00-
846	REFUND	07-02-2001	20,423.32
776	INTEREST DUE TAXPAYER	07-02-2001	89.32-
766	IMMEDIATE TAX RELIEF CREDIT	08-13-2001	600.00-
290	ADDITIONAL TAX ASSESSED 29254-999-05099-1 00000008	08-13-2001	0.00
846	REFUND	08-13-2001	600.00
640	ADVANCE PAYMENT OF DEFICIENCY	05-26-2002	2,593.00-
290	ADDITIONAL TAX ASSESSED 29254-565-50125-2 00000008	07-08-2002	2,433.00
196	INTEREST ASSESSED	07-08-2002	147.60

*****CONTINUED ON NEXT PAGE*****

4

PAGE NO-0002

IRS EMPLOYEE 2720751422

00000008		
846 REFUND	07-08-2002	12.46
776 INTEREST DUE TAXPAYER	07-08-2002	0.06-
670 SUBSEQUENT PAYMENT	04-05-2004	100,000.00-
290 ADDITIONAL TAX ASSESSED	05-03-2004	0.00
89254-507-05773-4 00000008		
290 QUICK ASSESSMENT	04-15-2004	842,782.00
89251-106-12196-4		
190 INTEREST ASSESSED	04-15-2004	157,439.68
00000008		
777 INTEREST DUE TAXPAYER REVERSED	07-02-2001	89.32
777 INTEREST DUE TAXPAYER REVERSED	07-08-2002	0.06
670 SUBSEQUENT PAYMENT	01-05-2005	1,051.01-
971 INTENT TO LEVY COLLECTION DUE PROCESS NOTICE	02-07-2005	
LEVY NOTICE ISSUED		
971 INTENT TO LEVY COLLECTION DUE PROCESS NOTICE	02-07-2005	
LEVY NOTICE ISSUED		
960 RECEIVED POA/TIA	02-17-2005	
582 FEDERAL TAX LIEN	06-10-2005	
360 FEES AND COLLECTION COSTS	07-11-2005	24.00
360 FEES AND COLLECTION COSTS	07-18-2005	24.00
706 OVERPAID CREDIT APPLIED	04-15-2005	43,958.00-
1040 200412		
300 ADDITIONAL TAX ASSESSED BY EXAMINATION	09-04-2006	0.00
29247-626-10032-6 00000008		
706 OVERPAID CREDIT APPLIED	04-15-2006	3,033.00-
1040 200512		
276 FAILURE TO PAY TAX PENALTY	11-06-2006	178,784.73
00000008		
300 ADDITIONAL TAX ASSESSED BY EXAMINATION	02-12-2007	0.00
29247-419-70004-7 00000008		

EXHIBIT J



July 10, 2003

Carl Schlachte
906 Grey Fox Circle
Pleasanton, CA 94566

Re: Loan Transaction Number: 34462701-2-8230
Maturity Date: August 29, 2003
Principal and Interest Due: \$365,564.80

Dear Mr. Schlachte:

The above referenced transaction will mature on August 29, 2003 ("Maturity Date"). The total principal and interest that will be due, and payable on the Maturity Date is \$365,564.80 ("Maturity Amount"). The collateral for this transaction is:

8,860 Shares of ARMHY, Value \$34,908.40 (as of 07/10/03, at \$3.94 per share)

Please note that the Maturity Amount is due in full and payable directly to Bancroft Ventures Limited ("Bancroft"), no later than 5:00pm Eastern Time on the first business day following the Maturity Date, and written notification regarding your maturity selection must be provided to Bancroft's Loan Processing Center using the enclosed notification form no later than 5:00pm Eastern Time on the Maturity Date.

Pursuant to the terms and conditions of your Master Agreement dated June 14, 2000, at maturity you will have the following alternatives to choose from:

1. Pay the Maturity Amount and Recover Your Collateral

You may pay the Maturity Amount in full and recover your collateral. To effect this alternative, your funds must be received and cleared for deposit in an account designated by Bancroft no later than 5:00pm Eastern Time on the first business day following the Maturity Date. Once your transaction has matured and your payment has cleared, the process of unwinding hedging transactions will begin. Your collateral will then be delivered via DTC transfer to your designated brokerage account within two business days following completion of the unwinding of hedging transactions.

IMPORTANT NOTE: If you select this alternative and your funds have not cleared by 5:00pm Eastern Time on the first business day following the Maturity Date, your collateral will be forfeited at that time in satisfaction of your debt obligation. If your collateral is forfeited, the value of your collateral at maturity will be determined by the average of the closing prices of your collateral shares, as reported by the *Wall Street Journal*, for the ten trading days prior to the Maturity Date ("Collateral Value"). If your Collateral Value exceeds the Maturity Amount, you will still be eligible to receive the amount of your Collateral Value that exceeds the Maturity Amount ("Net Collateral Value") in cash.

2. Renew or Refinance the Transaction for an Additional Term

You may elect to renew for an additional term, or refinance your transaction by pledging your collateral for an additional term, as follows:

If your Collateral Value is less than the Maturity Amount, you may renew your transaction, for a subsequent 3-year period (or longer), pursuant to the terms stated in the Renewable clause in the Schedule A for your maturing transaction. Please note that upon selecting this alternative you will need to execute a new Master Loan Financing and Security Agreement, Rider (if you have not already done so) and related Schedule (s) for the new term and pay the renewal fee of \$16,557.61 (Original Collateral Value multiplied by 5.50% per the terms in your Schedule A-2, which governs the renewal of this transaction). To effect this alternative, your funds for the renewal fee must be received and cleared for deposit in an account designated by Bancroft no later than 5:00pm Eastern Time on the first business day following the Maturity Date. The beginning balance of your loan for the new term will be the Maturity Amount (in which case you will not be eligible for

ML1241

BANCROFT VENTURES LIMITED
IOMA HOUSE, HOPE STREET, DOUGLAS, ISLE OF MAN IM1 1AP BRITISH ISLES
BOARD OF DIRECTORS: C.G. BOWEN, N.H. WOOD, CO. REG. NO. 100864C
TEL: +44 (0)1624 666 241 FAX: +44 (0)1624 666 242 www.bancroftventures.co.im

EXHIBIT K



September 03, 2003

Carl Schlachte
906 Grey Fox Circle
Pleasanton, CA 94566

Re: Maturity Valuation Report for Loan Number 34462701-2-8230

Dear Mr. Schlachte:

Your stock loan transaction number 34462701-2-8230 matured on August 29, 2003. Following are details of this loan transaction as of the maturity date:

Loan Number:	34462701-2-8230
Loan Date:	August 29, 2000
Maturity Date:	August 29, 2003
Loan Amount:	\$270,942.75
Balance Due:	\$365,564.80
Interest Accrued During Loan Term:	\$94,622.05
Payments Applied:	\$0.00
Dividends Applied:	\$0.00
Collateral (as of maturity date):	8,860 Shares of ARMY
Collateral Value*:	\$43,430.83
Net Difference (Collateral Value* Less Balance Due):	(\$322,133.97)
Loan Status:	Matured, Forfeited

*Collateral Value is calculated using the average of the closing prices, as reported by the *Wall Street Journal*, for the ten trading days prior to the maturity date.

Please contact the Loan Processing Center at 1-843-725-1130 if we can help address any questions you may have regarding this report. We appreciate the opportunity to be of service to you.

Sincerely,

Rebecca D. Trude
Operations Associate

MVRD30224

BANCROFT VENTURES LIMITED
IOMA HOUSE, HOPE STREET, DOUGLAS, ISLE OF MAN IM1 1AP BRITISH ISLES
BOARD OF DIRECTORS: C.G. BOWEN, N.H. WOOD, CO. REG. NO. 100864C
TEL: +44 (0)1624 666 241 FAX: +44 (0)1624 666 242 www.bancroftventures.co.im

EXHIBIT L



August 20, 2003

Carl Schlachte
906 Grey Fox Circle
Pleasanton, CA 94566

Re: SECOND NOTICE — Maturing Loan Transaction #34462701-1-6300

Dear Mr. Schlachte:

On July 10, 2003, Bancroft Loan Processing sent a notification to you of the pending maturity of your stock loan transaction number 34462701-1-6300. As of the date of this letter, no response has been received from you regarding your intentions at loan maturity.

As stated in the previous notification, in order to ensure the timely completion of this transaction at maturity, Bancroft Loan Processing must have received your decision, in writing, at least seven (7) business days prior to August 29, 2003 (or no later than August 20, 2003). As this has not occurred, conclusion of your selected alternative at loan maturity may now be delayed for at least fifteen business days subsequent to August 29, 2003.

Please contact Bancroft Loan Processing immediately regarding this matter. If Bancroft Loan Processing is not in receipt of a clear written instruction from you as of 5:00pm Eastern Time on August 29, 2003 as to your election concerning the referenced loan, the loan will be closed, your collateral will be forfeited, and Bancroft will subsequently remit the net collateral value (the value of your collateral, as defined by the average prices for your collateral shares over the ten trading days prior to maturity, as quoted in the *Wall Street Journal*, that exceeds your loan's maturity amount), if any, to you in cash. Please be advised that collateral forfeiture may constitute a taxable event for you, so it is important that you seriously consider your alternatives and communicate your decision immediately. For your convenience, you may return your selection to Bancroft Loan Processing by fax at 843-725-1131.

Please contact Bancroft Loan Processing at 843-725-1130 if we can help address any questions you may have with regard to this process. We appreciate the opportunity to be of service to you, and we hope that we can continue to be of service in the future.

Sincerely,

Rebecca D. Trude
Operations Associate

MLSDN221M3

BANCROFT VENTURES LIMITED
IOMA HOUSE, HOPE STREET, DOUGLAS, ISLE OF MAN IM1 1AP BRITISH ISLES
BOARD OF DIRECTORS: C.G. BOWEN, N.H. WOOD, CO. REG. NO. 100864C
TEL: +44 (0)1624 666 241 FAX: +44 (0)1624 666 242 www.bancroftventures.co.im

Carl Schlachte
906 Grey Fox Circle
Pleasanton, CA 94566

<u>Loan Number</u>	<u>Maturity Date</u>
34462701-1-6300	8/29/2003
34462701-2-8230	8/29/2003



DERIVUM
CAPITAL

EXHIBIT M



September 03, 2003

Carl Schlachte
906 Grey Fox Circle
Pleasanton, CA 94566

Re: Maturity Valuation Report for Loan Number 34462701-1-6300

Dear Mr. Schlachte:

Your stock loan transaction number 34462701-1-6300 matured on August 29, 2003. Following are details of this loan transaction as of the maturity date:

Loan Number:	34462701-1-6300
Loan Date:	August 29, 2000
Maturity Date:	August 29, 2003
Loan Amount:	\$2,025,392.18
Balance Due:	\$2,732,725.21
Interest Accrued During Loan Term:	\$707,333.03
Payments Applied:	\$0.00
Dividends Applied:	\$0.00
Collateral (as of maturity date):	66,266 Shares of ARMHY
Collateral Value*:	\$324,829.31
Net Difference (Collateral Value* Less Balance Due):	(\$2,407,895.90)
Loan Status:	Matured, Forfeited

*Collateral Value is calculated using the average of the closing prices, as reported by the *Wall Street Journal*, for the ten trading days prior to the maturity date.

Please contact the Loan Processing Center at 1-843-725-1130 if we can help address any questions you may have regarding this report. We appreciate the opportunity to be of service to you.

Sincerely,

Rebecca D. Trude
Operations Associate

MVR030224

BANCROFT VENTURES LIMITED
IOMA HOUSE, HOPE STREET, DOUGLAS, ISLE OF MAN IM1 1AP BRITISH ISLES
BOARD OF DIRECTORS: C.G. BOWEN, N.H. WOOD, CO. REG. NO. 100864C
TEL: +44 (0)1624 666 241 FAX: +44 (0)1624 666 242 www.bancroftventures.co.im

EXHIBIT N



September 03, 2003

Carl Schlachte
906 Grey Fox Circle
Pleasanton, CA 94566

Re: Maturity Valuation Report for Loan Number 34462701-1-6300

Dear Mr. Schlachte:

Your stock loan transaction number 34462701-1-6300 matured on August 29, 2003. Following are details of this loan transaction as of the maturity date:

Loan Number:	34462701-1-6300
Loan Date:	August 29, 2000
Maturity Date:	August 29, 2003
Loan Amount:	\$2,025,392.18
Balance Due:	\$2,732,725.21
Interest Accrued During Loan Term:	\$707,393.03
Payments Applied:	\$0.00
Dividends Applied:	\$0.00
Collateral (as of maturity date):	66,266 Shares of ARMHY
Collateral Value*:	\$324,829.31
Net Difference (Collateral Value* Less Balance Due):	(\$2,407,895.90)
Loan Status:	Matured, Forfeited

*Collateral Value is calculated using the average of the closing prices, as reported by the *Wall Street Journal*, for the ten trading days prior to the maturity date.

Please contact the Loan Processing Center at 1-843-725-1130 if we can help address any questions you may have regarding this report. We appreciate the opportunity to be of service to you.

Sincerely,

Rebecca D. Trude
Operations Associate

MVR030224

BANCROFT VENTURES LIMITED
IOMA HOUSE, HOPE STREET, DOUGLAS, ISLE OF MAN IM1 1AP BRITISH ISLES
BOARD OF DIRECTORS: C.G. BOWEN, N.H. WOOD, CO. REG. NO. 100864C
TEL: +44 (0)1624 666 241 FAX: +44 (0)1624 666 242 www.bancroftventures.co.im

EXHIBIT O



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. Box 1673
Sacramento CA 95812-1673

February 11, 2004

CARL SCHLACHTE
906 GREY FOX CIR
PLEASANTON, CA 94566-

New California law authorizes the Franchise Tax Board to aggressively combat abusive tax shelters and transactions by adding substantial penalties, along with new registration and reporting requirements for both investors and promoters of abusive tax shelters.

Information available to the Franchise Tax Board indicates that you may have entered into one or more transactions with First Security Capital and/or its successor, Derivium Capital. We reviewed the documents related to the transactions in general. It is our position that these transactions are sales of securities and reporting the transaction in a manner inconsistent to this is incorrect and may constitute an abusive tax avoidance transaction. If you entered into these transactions, your taxable income should include the gains from the sales of these securities.

California law provides a limited time opportunity for taxpayers who underreported their income or tax liability using abusive tax shelters and transactions to amend their returns and limit the risk of penalties, before we step-up our enforcement activities. These penalties are substantial and can range from 20 percent to 75 percent of the underpayment, and include an added penalty equal to 100 percent of the interest charged on any deficiency assessment.

This opportunity to come forward, which by statute is called the Voluntary Compliance Initiative, applies to tax year 2002 and prior tax years. It is effective through April 15, 2004. **To participate in the Voluntary Compliance Initiative** or get more information about the new abusive tax shelter and transaction penalties, read the enclosed brochure, or:

- Visit our Voluntary Compliance Initiative Website at www.ftb.ca.gov
- Email us at vci@ftb.ca.gov
- Call our Voluntary Compliance Initiative hotline at (916) 845-3232, Monday – Friday, 9:00 a.m. to 4:00 p.m.

This letter constitutes formal notification of the Voluntary Compliance Initiative pursuant to California Revenue and Taxation Code Section 19751(e). If you participated in an abusive tax shelter, and you do not participate in this initiative, you cannot avoid the abusive tax shelter and transaction penalties by filing an amended return after April 15, 2004.

Winston Mah, Chief
Audit Division

EXHIBIT P

Form 1040X

Department of the Treasury - Internal Revenue Service

Amended U.S. Individual Income Tax Return

OMB No. 1545-0041

(Rev. November 2000)

See separate instructions.

FILE COPY

This return is for calendar year 2000 or fiscal year ended

Please print or type	Your first name and initial CARL P	Last name SCHLACHTE	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial NANCY C	Last name SCHLACHTE	Spouse's social security number [REDACTED]
	Home address (no. and street) or P.O. box if mail is not delivered to your home 906 GRAY FOX CIRCLE		Appt. no.
	City, town or post office, state, and ZIP code, if you have a foreign address, see page 2 of the instructions. PLEASANTON CA 94566		Phone number
			For Paperwork Reduction Act Notice, see page 6.

- A If the name or address shown above is different from that shown on the original return, check here ☐ Yes ☒ No
- B Has the original return been changed or audited by the IRS or have you been notified that it will be? ☐ Yes ☒ No
- C Filing status. Be sure to complete this line. Note. You cannot change from joint to separate returns after the due date.
- On original return ☐ Single ☒ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)
- On this return ☐ Single ☒ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)
- * If the qualifying person is a child but not your dependent, see page 2.

Use Part II on the Back to Explain any Changes

Income and Deductions (see pages 2-5)		A. Original amount or as previously adjusted (see page 2)	B. Net change - amount of increase or (decrease) - explain in Part II	C. Correct amount
1	Adjusted gross income (see page 3)	393,680.	2,106,867.	2,500,547.
2	Itemized deductions or standard deduction (see page 3)	123,946.	-63,206.	60,740.
3	Subtract line 2 from line 1	269,734.	2,170,073.	2,439,807.
4	Exemptions. If changing, fill in Parts I and II on the back		NONE	NONE
5	Taxable income. Subtract line 4 from line 3	269,734.	2,170,073.	2,439,807.
6	Tax (see page 4). Method used in col. C SCH.D	95,332.	842,782.	938,114.
7	Credits (see page 4)			
8	Subtract line 7 from line 6. Enter the result but not less than zero	95,332.	842,782.	938,114.
9	Other taxes (see page 4)			
10	Total tax. Add lines 8 and 9	95,332.	842,782.	938,114.
11	Federal income tax withheld and excess social security and RRTA tax withheld. If changing, see page 5	65,990.		65,990.
12	Estimated tax payments, including amount applied from prior year's return			
13	Earned income credit (EIC)			
14	Additional child tax credit from Form 8812			
15	Credits from Form 2439 or Form 4136			
16	Amount paid with request for extension of time to file (see page 5)			
17	Amount of tax paid with original return plus additional tax paid after it was filed			29,342.
18	Total payments. Add lines 11 through 17 in column C			95,332.
Refund or Amount You Owe				
19	Overpayment, if any, as shown on original return or as previously adjusted by the IRS			
20	Subtract line 19 from line 18 (see page 5)			95,332.
21	Amount you owe. If line 10, column C, is more than line 20, enter the difference and see page 5			842,782.
22	If line 10, column C, is less than line 20, enter the difference			
23	Amount of line 22 you want refunded to you			
24	Amount of line 22 you want applied to your estimated tax			

Sign Here Joint return? See page 2. (Keep a copy for your records.)	Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.	
	Your signature [Signature]	Date
Paid	Preparer's signature [Signature]	Date
	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN P00084060
Preparer's Use Only	Firm's name (or yours if self-employed), address, and ZIP code MERCK CPAS & CONSULTANTS 101 GREEN STREET, PO BOX 3537 KINGSTON NY	EIN 14-1777420
	Phone no. 914-331-9667	

12402

Form 1040X (Rev. 11-2000)

JSA
0A0130 3,000

213-94-0535

12

Form 1040X (Rev. 11-2000) **CARL P E NCY C SCHLACHTER**

Page 2

Part I Exemptions. See Form 1040 or 1040A instructions.

If you are not changing your exemptions, do not complete this part.
 If claiming more exemptions, complete lines 25-31.
 If claiming fewer exemptions, complete lines 25-30.

A. Original
number of
exemptions
reported or as
previously
adjusted

B. Net change

C. Correct
number of
exemptions

25	25	2	2
Caution: If your parents (or someone else) can claim you as a dependent (even if they chose not to), you cannot claim an exemption for yourself.			
26	26	4	4
27	27		
28	28		
29	29	6	6
30	30		

Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are amending. Enter the result here and on line 4.

Tax year	Exemption amount	But see the instructions for line 4 on page 3 if the amount on line 4 is over:
2000	\$2,800	\$56,700
1999	2,750	54,875
1998	2,700	53,400
1997	2,650	51,900

30 NONE NONE

31 Dependents (children and other) not claimed on original (or adjusted) return:

Note: For tax years after 1997, do not complete column (e) below. For tax year 1997, do not complete column (d) below.

(a) First name	Last name	(b) Dependent's social security number	(c) Dependent's relationship to you	(d) ✓ If qualifying child (or child tax credit) (see page 5)	(e) No. of months lived in your home	No. of your children on line 31 who:
						<input type="checkbox"/> lived with you <input type="checkbox"/> did not live with you due to divorce or separation (see page 6) <input type="checkbox"/> Dependents on line 31 not entered above

Part II Explanation of Changes to Income, Deductions, and Credits

Enter the line number from the front of the form for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See page 2 of the instructions. Also, check here. ☐

SEE STATEMENT 1 - ATTACHED

Part III Presidential Election Campaign Fund. Checking below will not increase your tax or reduce your refund.

If you did not previously want \$3 to go to the fund but now want to, check here: ☐

If a joint return and your spouse did not previously want \$3 to go to the fund but now wants to, check here. ☐

Form 1040X (Rev. 11-2000)

Statement 1 2000 Form 1040-X

Carl & Nancy Schlachte
ID # 213-94-0535

QUALIFIED AMENDED RETURN Filed under Treasury Regulation 1.6664-2(c)(3). This qualified amended return is being filed in response to comments from the government regarding the underlying transaction and is specifically intended to satisfy the requirements of Treasury Regulation 1.6664-2(c)(3). Nothing set forth in this amendment should be construed to imply that the taxpayers agree with the vaildity of the government's comments regarding the underlying transaction. This qualified amended return shall not impact the statutory ability of the taxpayers to subsequently file an amended return reflecting a filing position different from that set forth herein.

The change in income on line 1 is related to the recognition of a gain of securities not previously reported - see attached Schedule D.

SCHEDULE D

(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Capital Gains and Losses

▶ Attach to Form 1040.

▶ See instructions for Schedule D (Form 1040).

▶ Use Schedule D-1 for more space to list transactions for lines 1 and 8.

OMB No. 1545-0074

2000

Attachment
Sequence No. 12

Name(s) shown on Form 1040

CARL P & NANCY C SCHLACHTE

Your social security number

Part I Short-Term Capital Gains and Losses - Assets Held One Year or Less

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6)	(e) Cost or other basis (see page D-6)	(f) Gain or (loss) Subtract (e) from (d)
1 ARM STOCK - 11,200 SHS	03/15/2000	05/31/2000	102,816.	10,326.	92,490.
ARM STOCK	03/15/2000	08/29/2000	2,296,335.	189,468.	2,106,867.
2 Enter your short-term totals, if any, from Schedule D-1, line 2	2				
3 Total short-term sales price amounts. Add column (d) of lines 1 and 2	3	2,399,151.			
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824	4				
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	5				
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your 1999 Capital Loss Carryover Worksheet	6	()			
7 Net short-term capital gain or (loss). Combine column (f) of lines 1 through 6	7	2,199,357.			

Part II Long-Term Capital Gains and Losses - Assets Held More Than One Year

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6)	(e) Cost or other basis (see page D-6)	(f) Gain or (loss) Subtract (e) from (d)	(g) 28% rate gain or (loss) * (see instr. below)
8 Enter your long-term totals, if any, from Schedule D-1, line 9	8					
10 Total long-term sales price amounts. Add column (d) of lines 8 and 9	10					
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824	11				730.	
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	12					
13 Capital gain distributions. See page D-1	13				3,117.	
14 Long-term capital loss carryover. Enter in both columns (f) and (g) the amount, if any, from line 13 of your 1999 Capital Loss Carryover Worksheet	14	()	()			
15 Combine column (g) of lines 8 through 14	15					
16 Net long-term capital gain or (loss). Combine column (f) of lines 8 through 14	16				3,847.	

* 28% rate gain or loss includes all "collectibles gains and losses" (as defined on page D-6) and up to 50% of the eligible gain on qualified small business stock (see page D-4).

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule D (Form 1040) 2000

JSA

0A2011 1.000

213-94-0535

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EXHIBIT Q

Form 1040X

Department of the Treasury - Internal Revenue Service
Amended U.S. Individual Income Tax Return

OMB No. 1545-0091

(Rev. November 2000)

See separate instructions.

This return is for calendar year 2000, or fiscal year ended

Please print or type	Your first name and initial CARL P	Last name SCHLACHTE	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial NANCY C	Last name SCHLACHTE	Spouse's social security number [REDACTED]
	Home address (no. and street) or P.O. box if mail is not delivered to your home 906 GRAY FOX CIRCLE		Apt. no.
	City, town or post office, state, and ZIP code. If you have a foreign address, see page 2 of the instructions. PLEASANTON CA 94566		Phone number

- A If the name or address shown above is different from that shown on the original return, check here ☐ Yes ☒ No
- B Has the original return been changed or audited by the IRS or have you been notified that it will be? ☐ Yes ☒ No
- C Filing status. Be sure to complete this line. Note. You cannot change from joint to separate returns after the due date.
- On original return ☐ Single ☒ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)
- On this return ☐ Single ☒ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)
- * If the qualifying person is a child but not your dependent, see page 2.

Use Part II on the Back to Explain any Changes		A. Original amount or as previously adjusted (see page 2)	B. Net change - amount of increase or (decrease) - explain in Part II	C. Correct amount
Income and Deductions (see pages 2-6)				
1	Adjusted gross income (see page 3)	2,500,547.	-2,106,867.	393,680.
2	Itemized deductions or standard deduction (see page 3)	60,740.	63,206.	123,946.
3	Subtract line 2 from line 1	2,439,807.	-2,170,073.	269,734.
4	Exemptions. If changing, fill in Parts I and II on the back	NONE	NONE	NONE
5	Taxable income. Subtract line 4 from line 3	2,439,807.	-2,170,073.	269,734.
6	Tax (see page 4). Method used in col. C SCH D	938,114.	-842,782.	95,332.
7	Credits (see page 4)			
8	Subtract line 7 from line 6. Enter the result but not less than zero	938,114.	-842,782.	95,332.
9	Other taxes (see page 4)			
10	Total tax. Add lines 8 and 9	938,114.	-842,782.	95,332.
11	Federal income tax withheld and excess social security and RRTA tax withheld. If changing, see page 5	65,990.		65,990.
12	Estimated tax payments, including amount applied from prior year's return			
13	Earned income credit (EIC)			
14	Additional child tax credit from Form 8812			
15	Credits from Form 2439 or Form 4136			
16	Amount paid with request for extension of time to file (see page 5)			
17	Amount of tax paid with original return plus additional tax paid after it was filed			129,342.
18	Total payments. Add lines 11 through 17 in column C			195,332.

Refund or Amount You Owe				
19	Overpayment, if any, as shown on original return or as previously adjusted by the IRS			
20	Subtract line 19 from line 18 (see page 5)			195,332.
21	Amount you owe. If line 10, column C, is more than line 20, enter the difference and see page 5			
22	If line 10, column C, is less than line 20, enter the difference			100,000.
23	Amount of line 22 you want refunded to you			
24	Amount of line 22 you want applied to your 2003 estimated tax	100,000.		

Sign Here	Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.			
	Your signature _____ Date _____		Spouse's signature, if a joint return, both must sign. _____ Date _____	
Paid	Preparer's signature _____	Date _____	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN P00084060
	Firm's name (or yours if self-employed), address, and ZIP code MERCK CPAS & CONSULTANTS 101 GREEN STREET, PO BOX 3537 KINGSTON NY	EIN 14-1777420	Phone no 914-331-9667	

Form 1040X (Rev. 11-2000) **CARL P & NANCY C SCHLACHTE**

Page 2

Part I Exemptions. See Form 1040 or 1040A instructions.

If you are not changing your exemptions, do not complete this part.
 If claiming more exemptions, complete lines 25-31.
 If claiming fewer exemptions, complete lines 25-30.

		A. Original number of exemptions reported or as previously adjusted	B. Net change	C. Correct number of exemptions															
25 Yourself and spouse	25	2		2															
Caution: If your parents (or someone else) can claim you as a dependent (even if they chose not to), you cannot claim an exemption for yourself.																			
26 Your dependent children who lived with you	26	4		4															
27 Your dependent children who did not live with you due to divorce or separation	27																		
28 Other dependents	28																		
29 Total number of exemptions. Add lines 25 through 28	29	6		6															
30 Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are amending. Enter the result here and on line 4.																			
<table border="1"> <thead> <tr> <th>Tax year</th> <th>Exemption amount</th> <th>But see the instructions for line 4 on page 3 if the amount on line 1 is over:</th> </tr> </thead> <tbody> <tr> <td>2000</td> <td>\$2,800</td> <td>\$96,700</td> </tr> <tr> <td>1999</td> <td>2,750</td> <td>94,975</td> </tr> <tr> <td>1998</td> <td>2,700</td> <td>93,400</td> </tr> <tr> <td>1997</td> <td>2,650</td> <td>90,900</td> </tr> </tbody> </table>	Tax year	Exemption amount	But see the instructions for line 4 on page 3 if the amount on line 1 is over:	2000	\$2,800	\$96,700	1999	2,750	94,975	1998	2,700	93,400	1997	2,650	90,900	30	NONE	NONE	NONE
Tax year	Exemption amount	But see the instructions for line 4 on page 3 if the amount on line 1 is over:																	
2000	\$2,800	\$96,700																	
1999	2,750	94,975																	
1998	2,700	93,400																	
1997	2,650	90,900																	

31 Dependents (children and other) not claimed on original (or adjusted) return:
 Note: For tax years after 1997, do not complete column (e) below. For tax year 1997, do not complete column (d) below.

(a) First name	Last name	(b) Dependent's social security number	(c) Dependent's relationship to you	(d) <input type="checkbox"/> If qualifying child for child tax credit (see page 5)	(e) No. of months lived in your home	No. of your children on line 31 who:
						<input type="checkbox"/> lived with you <input type="checkbox"/> did not live with you due to divorce or separation (see page 5) <input type="checkbox"/> Dependents on line 31 not entered above

Part II Explanation of Changes to Income, Deductions, and Credits

Enter the line number from the front of the form for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See page 2 of the instructions. Also, check here. ☐

SEE STATEMENT 1 - ATTACHED

Part III Presidential Election Campaign Fund. Checking below will not increase your tax or reduce your refund.

If you did not previously want \$3 to go to the fund but now want to, check here. ☐
 If a joint return and your spouse did not previously want \$3 to go to the fund but now wants to, check here. ☐

Statement 1 2000 Form 1040-X

Carl & Nancy Schlachte

ID # 213-94-0535

QUALIFIED AMENDED RETURN Filed under Treasury Regulation 1.6664-2(c)(3). This qualified amended return is being filed in response to comments from the government regarding the underlying transaction and is specifically intended to satisfy the requirements of Treasury Regulation 1.6664-2(c)(3). Nothing set forth in this amendment should be construed to imply that the taxpayers agree with the vaildity of the government's comments regarding the underlying transaction. This qualified amended return shall not impact the statutory ability of the taxpayers to subsequently file an amended return reflecting a filing position different from that set forth herein.

The change in income on line 1 is related to the gain on the sale of securities which was originally reported in 2000 and after having time to fully consider the transaction we believe the recognition of the gain of securities should have been reported when the transaction was completed in 2003 and therefore the transaction was reported in 2003 and not in 2000 - see attached Schedule D.

The \$100,000 overpayment due to this change is requested to be applied to the 2003 tax year - the year in which the gain was properly recognized.

SCHEDULES A&B
 (Form 1040)

 Department of the Treasury
 Internal Revenue Service (99)

Schedule A - Itemized Deductions

(Schedule B is on back)

OMB No. 1545-0074

2000

 Attachment
 Sequence No. 07

Attach to Form 1040. See instructions for Schedules A and B (Form 1040).

Name(s) shown on Form 1040

Your social security number

CARL P & NANCY C SCHLACHTE
**Medical
and
Dental
Expenses**

Caution. Do not include expenses reimbursed or paid by others.

- 1 Medical and dental expenses (see page A-2)
- 2 Enter amount from Form 1040, line 34 2
- 3 Multiply line 2 above by 7.5% (.075)
- 4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-

1

3

4

**Taxes You
Paid**
(See
page A-2.)

- 5 State and local income taxes STMT 4
- 6 Real estate taxes (see page A-2) STMT 4
- 7 Personal property taxes
- 8 Other taxes. List type and amount ▶

5

6

7

8

80,289.

5,283.

- 9 Add lines 5 through 8

9

85,572.

**Interest
You Paid**
(See
page A-3.)

- 10 Home mortgage interest and points reported to you on Form 1098
- 11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see page A-3 and show that person's name, identifying no., and address ▶

10

11

26,078.

Note:

 Personal
interest is
not
deductible.

- 12 Points not reported to you on Form 1098. See page A-3 for special rules
- 13 Investment interest. Attach Form 4952 if required. (See page A-3.)
- 14 Add lines 10 through 13.

12

13

14

26,078.

**Gifts to
Charity**

 If you made a
gift and got a
benefit for it,
see page A-4.

- 15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4. SEE STATEMENT 4
- 16 Other than by cash or check. If any gift of \$250 or more, see page A-4. You must attach Form 8283 if over \$500
- 17 Carryover from prior year
- 18 Add lines 15 through 17

15

16

17

19,030.

1,208.

STMT 5

18

20,238.

Casualty and
Theft Losses

- 19 Casualty or theft loss(es). Attach Form 4684. (See page A-5.)

19

**Job Expenses
and Most
Other
Miscellaneous
Deductions**

 (See
page A-5 for
expenses to
deduct here.)

- 20 Unreimbursed employee expenses - job travel, union dues, job education, etc. You must attach Form 2106 or 2106-EZ if required. (See page A-5.) ▶
- 21 Tax preparation fees
- 22 Other expenses- investment, safe deposit box, etc. List type and amount ▶
- SEE STATEMENT 5
- 23 Add lines 20 through 22
- 24 Enter amount from Form 1040, line 34 24 393,680.
- 25 Multiply line 24 above by 2% (.02)
- 26 Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-

20

21

22

23

24

25

26

1,055.

251.

1,306.

7,874.

26

NONE

**Other
Miscellaneous
Deductions**

- 27 Other- from list on page A-6. List type and amount ▶

27

**Total
Itemized
Deductions**

- 28 Is Form 1040, line 34, over \$128,950 (over \$64,475 if married filing separately)?
- ☐ No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 36.
- ☒ Yes. Your deduction may be limited. See page A-6 for the amount to enter.

28

123,946.

SEE STMT 6

SCHEDULE D
(Form 1040)

 Department of the Treasury
 Internal Revenue Service (99)

Capital Gains and Losses

▶ Attach to Form 1040.

▶ See Instructions for Schedule D (Form 1040).

▶ Use Schedule D-1 for more space to list transactions for lines 1 and 8.

OMB No. 1545-0074

2000

 Attachment
 Sequence No. 12

Name(s) shown on Form 1040

Your social security number

CARL P & NANCY C SCHLACHTE
Part I Short-Term Capital Gains and Losses - Assets Held One Year or Less

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6)	(e) Cost or other basis (see page D-6)	(f) Gain or (loss) Subtract (e) from (d)
1 ARM STOCK - 11,200 SHS	03/15/2000	05/31/2000	102,816.	10,326.	92,490.
2 Enter your short-term totals, if any, from Schedule D-1, line 2	2				
3 Total short-term sales price amounts. Add column (d) of lines 1 and 2	3	102,816.			
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824	4				
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	5				
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your 1999 Capital Loss Carryover Worksheet	6	()			
7 Net short-term capital gain or (loss). Combine column (f) of lines 1 through 6	7	92,490.			

Part II Long-Term Capital Gains and Losses - Assets Held More Than One Year

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6)	(e) Cost or other basis (see page D-6)	(f) Gain or (loss) Subtract (e) from (d)	(g) 28% rate gain or (loss) * (see instr. below)
8						
9 Enter your long-term totals, if any, from Schedule D-1, line 9	9					
10 Total long-term sales price amounts. Add column (d) of lines 8 and 9	10					
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824	11	730.				
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	12					
13 Capital gain distributions. See page D-1	13	3,117.				
14 Long-term capital loss carryover. Enter in both columns (f) and (g) the amount, if any, from line 13 of your 1999 Capital Loss Carryover Worksheet	14	()	()			
15 Combine column (g) of lines 8 through 14	15					
16 Net long-term capital gain or (loss). Combine column (f) of lines 8 through 14	16	3,847.				

* 28% rate gain or loss includes all "collectibles gains and losses" (as defined on page D-6) and up to 50% of the eligible gain on qualified small business stock (see page D-4).

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule D (Form 1040) 2000

Schedule D (Form 1040) 2000 **CARL P & NANCY C SCHLACHTE**

Page 2

Part III Summary of Parts I and II

17	Combine lines 7 and 16. If a loss, go to line 18. If a gain, enter the gain on Form 1040, line 13.	17	96,337.
Next: Complete Form 1040 through line 39. Then, go to Part IV to figure your tax if:			
<ul style="list-style-type: none"> Both lines 16 and 17 are gains and Form 1040, line 39, is more than zero. Otherwise, stop here.			
18	If line 17 is a loss, enter here and as a (loss) on Form 1040, line 13, the smaller of these losses:	18	()
<ul style="list-style-type: none"> The loss on line 17 or (\$3,000) or, if married filing separately, (\$1,500) Next: Skip Part IV below. Instead, complete Form 1040 through line 37. Then, complete the Capital Loss Carryover Worksheet on page D-6 if: <ul style="list-style-type: none"> The loss on line 17 exceeds the loss on line 18 or Form 1040, line 37, is a loss. 			

Part IV Tax Computation Using Maximum Capital Gains Rates

19	Enter your taxable income from Form 1040, line 39	19	269,734.
20	Enter the smaller of line 16 or line 17 of Schedule D	20	3,847.
21	If you are filing Form 4952, enter the amount from Form 4952, line 4e	21	
22	Subtract line 21 from line 20. If zero or less, enter -0-	22	3,847.
23	Combine lines 7 and 15. If zero or less, enter -0-	23	92,490.
24	Enter the smaller of line 15 or line 23, but not less than zero	24	
25	Enter your unrecaptured section 1250 gain, if any, from line 17 of the worksheet on page D-8	25	730.
26	Add lines 24 and 25	26	730.
27	Subtract line 26 from line 22. If zero or less, enter -0-	27	3,117.
28	Subtract line 27 from line 19. If zero or less, enter -0-	28	266,617.
29	Enter the smaller of:	29	43,850.
<ul style="list-style-type: none"> The amount on line 19 or \$26,250 if single; \$43,850 if married filing jointly or qualifying widow(er); \$21,925 if married filing separately; or \$35,150 if head of household 			
30	Enter the smaller of line 28 or line 29	30	43,850.
31	Subtract line 22 from line 19. If zero or less, enter -0-	31	265,887.
32	Enter the larger of line 30 or line 31	32	265,887.
33	Figure the tax on the amount on line 32. Use the Tax Table or Tax Rate Schedules, whichever applies. Note. If the amounts on lines 29 and 30 are the same, skip lines 34 through 37 and go to line 38.	33	78,768.
34	Enter the amount from line 29	34	
35	Enter the amount from line 30	35	
36	Subtract line 35 from line 34	36	
37	Multiply line 36 by 10% (.10)	37	
Note. If the amounts on lines 19 and 29 are the same, skip lines 38 through 51 and go to line 52.			
38	Enter the smaller of line 19 or line 27	38	3,117.
39	Enter the amount from line 36	39	
40	Subtract line 39 from line 38	40	3,117.
41	Multiply line 40 by 20% (.20)	41	623.
Note. If line 26 is zero or blank, skip lines 42 through 51 and go to line 52.			
42	Enter the smaller of line 22 or line 25	42	730.
43	Add lines 22 and 32	43	269,734.
44	Enter the amount from line 19	44	269,734.
45	Subtract line 44 from line 43. If zero or less, enter -0-	45	
46	Subtract line 45 from line 42. If zero or less, enter -0-	46	730.
47	Multiply line 46 by 25% (.25)	47	183.
Note. If line 24 is zero or blank, skip lines 48 through 51 and go to line 52.			
48	Enter the amount from line 19	48	
49	Add lines 32, 36, 40, and 46	49	
50	Subtract line 49 from line 48	50	
51	Multiply line 50 by 28% (.28)	51	
52	Add lines 33, 37, 41, 47, and 51	52	79,574.
53	Figure the tax on the amount on line 19. Use the Tax Table or Tax Rate Schedules, whichever applies	53	80,153.
54	Tax on all taxable income (including capital gains). Enter the smaller of line 52 or line 53 here and on Form 1040, line 40	54	79,574.

EXHIBIT R

Form 1040X

Department of the Treasury - Internal Revenue Service
Amended U.S. Individual Income Tax Return

OMB No. 1545-0091

(Rev. November 2003)

See separate instructions.

This return is for calendar year 2003, or fiscal year ended

Please print or type	Your first name and initial CARL P	Last name SCHLACHTE	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial NANCY C	Last name SCHLACHTE	Spouse's social security number [REDACTED]
	Home address (no. and street) or P.O. box if mail is not delivered to your home 906 GRAY FOX CIRCLE		Phone number [REDACTED]
	City, town or post office, state, and ZIP code. If you have a foreign address, see page 2 of the instructions. PLEASANTON CA 94566		For Paperwork Reduction Act Notice, see page 6.

- A If the name or address shown above is different from that shown on the original return, check here ☐ Yes ☒ No
- B Has the original return been changed or audited by the IRS or have you been notified that it will be? ☐ Yes ☒ No
- C Filing status. Be sure to complete this line. Note. You cannot change from joint to separate returns after the due date.
- On original return ☐ Single ☒ Married filing jointly ☐ Married filing separately ☐ Head of household ☐ Qualifying widow(er)
- On this return ☐ Single ☒ Married filing jointly ☐ Married filing separately ☐ Head of household* ☐ Qualifying widow(er)
- * If the qualifying person is a child but not your dependent, see page 2.

Use Part II on the back to explain any changes		A. Original amount or as previously adjusted (see page 2)	B. Net change - amount of increase or (decrease) - explain in Part II	C. Correct amount
Income and Deductions (see pages 2-6)				
	1 Adjusted gross income (see page 3)	346,356.	1,554,176.	1,900,532.
	2 Itemized deductions or standard deduction (see page 3)	111,862.	-77,709.	34,153.
	3 Subtract line 2 from line 1	234,494.	1,631,885.	1,866,379.
	4 Exemptions. If changing, fill in Parts I and II on the back		NONE	NONE
	5 Taxable income. Subtract line 4 from line 3	234,494.	1,631,885.	1,866,379.
Tax Liability	6 Tax (see page 4). Method used in col. C SCH.D	70,173.	247,727.	317,900.
	7 Credits (see page 4)		1,065.	1,065.
	8 Subtract line 7 from line 6. Enter the result but not less than zero	70,173.	246,662.	316,835.
	9 Other taxes (see page 4)			
	10 Total tax. Add lines 8 and 9	70,173.	246,662.	316,835.
Payments	11 Federal income tax withheld and excess social security and tier 1 RRTA tax withheld. If changing, see page 4	44,828.		44,828.
	12 Estimated tax payments, including amount applied from prior year's return	20,077.	100,000.	120,077.
	13 Earned income credit (EIC)			
	14 Additional child tax credit from Form 8812			
	15 Credits from Form 2439, Form 4136, or Form 8885			
	16 Amount paid with request for extension of time to file (see page 4)			
	17 Amount of tax paid with original return plus additional tax paid after it was filed			5,268.
	18 Total payments. Add lines 11 through 17 in column C			170,173.
Refund or Amount You Owe				
	19 Overpayment, if any, as shown on original return or as previously adjusted by the IRS			
	20 Subtract line 19 from line 18 (see page 5)			170,173.
	21 Amount you owe. If line 10, column C, is more than line 20, enter the difference and see page 5			146,662.
	22 If line 10, column C, is less than line 20, enter the difference			
	23 Amount of line 22 you want refunded to you			
	24 Amount of line 22 you want applied to your estimated tax	24		

Sign Here Joint return? See page 2. Keep a copy for your records.	Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.	
	Your signature _____ Date _____	Spouse's signature. If a joint return, both must sign. _____ Date _____
Paid Preparer's Use Only	Preparer's signature _____ Date _____	Check if self-employed <input type="checkbox"/> Preparer's SSN or PTIN P00084060
	Firm's name (or yours if self-employed), address, and ZIP code MERCK CPAS & CONSULTANTS 101 GREEN STREET, PO BOX 3537 KINGSTON NY	EIN 06-1663933 Phone no 914-331-9667

CARL P. SCHLACHTE
NANCY C. SCHLACHTE
906 GRAY FOX CIRCLE
PLEASANTON, CA 94566

90-4217/1222
20116510

526

DATE Sept. 14, 2004

PAY TO THE ORDER OF United States Treasury \$ 146,662.00
One hundred forty-six thousand six hundred sixty-two
NORTHERN TRUST BANK OF CALIFORNIA N.A. DOLLARS



Northern Trust

2003 1040X

MEMO

213-94-0535

Nancy C Schlachte NP

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Form 1040X (Rev. 11-2003) **CARL P & NANCY C SCHLACHTE**

Page 2

Part I Exemptions. See Form 1040 or 1040A instructions.

If you are not changing your exemptions, do not complete this part.

If claiming more exemptions, complete lines 25-31.

If claiming fewer exemptions, complete lines 25-30.

A. Original
number of
exemptions
reported or as
previously
adjusted

B. Net change

C. Correct
number of
exemptions

25	Yourself and spouse	25																	
Caution. If your parents (or someone else) can claim you as a dependent (even if they chose not to), you cannot claim an exemption for yourself.																			
26	Your dependent children who lived with you	26																	
27	Your dependent children who did not live with you due to divorce or separation	27																	
28	Other dependents	28																	
29	Total number of exemptions. Add lines 25 through 28	29																	
30	Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are amending. Enter the result here and on line 4. <table border="1"> <thead> <tr> <th>Tax year</th> <th>Exemption amount</th> <th>But see the instructions for line 4 on page 3 if the amount on line 1 is over:</th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$3,050</td> <td>\$104,625</td> </tr> <tr> <td>2002</td> <td>3,000</td> <td>103,000</td> </tr> <tr> <td>2001</td> <td>2,900</td> <td>99,725</td> </tr> <tr> <td>2000</td> <td>2,800</td> <td>96,700</td> </tr> </tbody> </table>	Tax year	Exemption amount	But see the instructions for line 4 on page 3 if the amount on line 1 is over:	2003	\$3,050	\$104,625	2002	3,000	103,000	2001	2,900	99,725	2000	2,800	96,700	30		
Tax year	Exemption amount	But see the instructions for line 4 on page 3 if the amount on line 1 is over:																	
2003	\$3,050	\$104,625																	
2002	3,000	103,000																	
2001	2,900	99,725																	
2000	2,800	96,700																	

31 Dependents (children and other) not claimed on original (or adjusted) return:

No. of your
children on line
31 who:• lived with
you• did not live
with you due to
divorce or
separation (see
page 5)Dependents
on line 31 not
entered above

(a) First name	Last name	(b) Dependent's social security number	(c) Dependent's relationship to you	(d) <input checked="" type="checkbox"/> If qualifying child for child tax credit (see page 5)

Part II Explanation of Changes to Income, Deductions, and Credits

Enter the line number from the front of the form for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See page 2 of the instructions. Also, check here ☐

SEE STATEMENT 1 ATTACHED

Part III Presidential Election Campaign Fund. Checking below will not increase your tax or reduce your refund.If you did not previously want \$3 to go to the fund but now want to, check here ☐If a joint return and your spouse did not previously want \$3 to go to the fund but now wants to, check here ☐

Statement 1 2003 Form 1040-X

Carl & Nancy Schlachte
ID # 213-94-0535

QUALIFIED AMENDED RETURN Filed under Treasury Regulation 1.6664-2(c)(3). This qualified amended return is being filed in response to comments from the government regarding the underlying transaction and is specifically intended to satisfy the requirements of Treasury Regulation 1.6664-2(c)(3). Nothing set forth in this amendment should be construed to imply that the taxpayers agree with the vaildity of the government's comments regarding the underlying transaction. This qualified amended return shall not impact the statutory ability of the taxpayers to subsequently file an amended return reflecting a filing position different from that set forth herein.

The change in income on line 1 is related to the gain on the sale of securities which was originally reported in 2000 and after having time to fully consider the transaction we believe the recognition of the gain of securities should have been reported when the transaction was completed in 2003 and therefore the transaction was reported in 2003 and not in 2000 - see attached Schedules A & D.

Increase in the estimated tax payments of \$100,000 is due to the application of the overpayment of taxes from Form 1040-X for the year 2000 to the 2003 tax year.

SCHEDULE D
(Form 1040)Department of the Treasury
Internal Revenue Service (99)

Capital Gains and Losses

▶ Attach to Form 1040.

▶ See Instructions for Schedule D (Form 1040).

▶ Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074

2003

Attachment
Sequence No 12

Name(s) shown on Form 1040

Your social security number

CARL P & NANCY C SCHLACHTE

Part I Short-Term Capital Gains and Losses - Assets Held One Year or Less

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6 of the instructions)	(e) Cost or other basis (see page D-6 of the instructions)	(f) Gain or (loss) for the entire year Subtract (e) from (d)	(g) Post-May 5 gain or (loss)* (see below)
1TD WATERHOUSE - ST	VARIOUS	VARIOUS	238,971.	210,002.	28,969.	28,969.

2 Enter your short-term totals, if any, from
Schedule D-1, line 2

2

3 Total short-term sales price amounts.

Add lines 1 and 2 in column (d)

3

238,971.

4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684,
6781, and 8824

4

5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts
from Schedule(s) K-1

5

3,827.

3,827.

6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your
2002 Capital Loss Carryover Worksheet

6

(285,513)

7a Combine lines 1 through 5 in column (g). If the result is a loss, enter the result.

Otherwise, enter -0-. Do not enter more than zero

7a

b Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f)

7b

-252,717.

Part II Long-Term Capital Gains and Losses - Assets Held More Than One Year

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6 of the instructions)	(e) Cost or other basis (see page D-6 of the instructions)	(f) Gain or (loss) for the entire year Subtract (e) from (d)	(g) Post-May 5 gain or (loss)* (see below)
8TD WATERHOUSE - PRE 5/5 LT	VARIOUS	VARIOUS	24,748.	95,172.	-70,424.	
ARM STOCK	03/15/2000	08/29/2003	2,296,335.	189,468.	2,106,867.	2,106,867.

9 Enter your long-term totals, if any, from
Schedule D-1, line 9

9

10 Total long-term sales price amounts.

Add lines 8 and 9 in column (d)

10

2,321,083.

11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and
long-term gain or (loss) from Forms 4684, 6781, and 8824

11

12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts
from Schedule(s) K-1

12

13 Capital gain distributions. See page D-2 of the instructions

13

14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your
2002 Capital Loss Carryover Worksheet

14

(232,550)

15 Combine lines 8 through 13 in column (g). If zero or less, enter -0-

15

2,106,867.

16 Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f)

16

1,803,893.

Next: Go to Part III on the back.

* Include in column (g) all gains and losses from column (f) from sales, exchanges, or conversions (including installment payments received) after May 5, 2003. However, do not include gain attributable to unrecaptured section 1250 gain, "collectibles gains and losses" (as defined on page D-8 of the instructions) or eligible gain on qualified small business stock (see page D-4 of the instructions).

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule D (Form 1040) 2003

CARL P & NANCY C SCHLACHTE

Schedule D (Form 1040) 2003

Page 2

Part III Taxable Gain or Deductible Loss

17a	Combine lines 7b and 16 and enter the result. If a loss, enter -0- on line 17b and go to line 18. If a gain, enter the gain on Form 1040, line 13a, and go to line 17b below.	17a	1,551,176.
b	Combine lines 7a and 15. If zero or less, enter -0-. Then complete Form 1040 through line 40. Next: <ul style="list-style-type: none"> If line 16 of Schedule D is a gain or you have qualified dividends on Form 1040, line 9b, complete Part IV below. Otherwise, skip the rest of Schedule D and complete the rest of Form 1040. 	17b	2,106,867.
18	If line 17a is a loss, enter here and on Form 1040, line 13a, the smaller of (a) that loss or (b) (\$3,000) (or, if married filing separately, (\$1,500)) (see page D-7 of the instructions). Next: <ul style="list-style-type: none"> If you have qualified dividends on Form 1040, line 9b, complete Form 1040 through line 40, and then complete Part IV below (but skip lines 19 and 20). Otherwise, skip Part IV below and complete the rest of Form 1040. 	18	()

Part IV Tax Computation Using Maximum Capital Gains Rates

If line 16 or line 17a is zero or less, skip lines 19 and 20 and go to line 21. Otherwise, go to line 19.			
19	Enter your unrecaptured section 1250 gain, if any, from line 18 of the worksheet on page D-7.	19	
20	Enter your 28% rate gain, if any, from line 7 of the worksheet on page D-8 of the instructions.	20	
If lines 19 and 20 are zero, go to line 21. Otherwise, complete the worksheet on page D-11 of the instructions to figure the amount to enter on lines 35 and 53 below, and skip all other lines below.			
21	Enter your taxable income from Form 1040, line 40.	21	1,866,379.
22	Enter the smaller of line 16 or line 17a, but not less than zero.	22	1,551,176.
23	Enter your qualified dividends from Form 1040, line 9b.	23	1,520.
24	Add lines 22 and 23.	24	1,552,696.
25	Amount from line 4g of Form 4952 (investment interest expense).	25	
26	Subtract line 25 from line 24. If zero or less, enter -0-.	26	1,552,696.
27	Subtract line 26 from line 21. If zero or less, enter -0-.	27	313,683.
28	Enter the smaller of line 21 or: <ul style="list-style-type: none"> \$56,800 if married filing jointly or qualifying widow(er); \$28,400 if single or married filing separately; or \$38,050 if head of household 	28	56,800.
If line 27 is more than line 28, skip lines 29-39 and go to line 40.			
29	Enter the amount from line 27.	29	
30	Subtract line 29 from line 28. If zero or less, enter -0- and go to line 40.	30	
31	Add lines 17b and 23*.	31	
32	Enter the smaller of line 30 or line 31.	32	
33	Multiply line 32 by 5% (.05).	33	
If lines 30 and 32 are the same, skip lines 34-39 and go to line 40.			
34	Subtract line 32 from line 30.	34	
35	Enter your qualified 5-year gain, if any, from line 8 of the worksheet on page D-10.	35	
36	Enter the smaller of line 34 or line 35.	36	
37	Multiply line 36 by 8% (.08).	37	
38	Subtract line 36 from line 34.	38	
39	Multiply line 38 by 10% (.10).	39	
If lines 26 and 30 are the same, skip lines 40-49 and go to line 50.			
40	Enter the smaller of line 21 or line 26.	40	1,552,696.
41	Enter the amount from line 30 (if line 30 is blank, enter -0-).	41	
42	Subtract line 41 from line 40.	42	1,552,696.
43	Add lines 17b and 23*.	43	2,108,387.
44	Enter the amount from line 32 (if line 32 is blank, enter -0-).	44	
45	Subtract line 44 from line 43.	45	2,108,387.
46	Enter the smaller of line 42 or line 45.	46	1,552,696.
47	Multiply line 46 by 15% (.15).	47	232,904.
48	Subtract line 46 from line 42.	48	
49	Multiply line 48 by 20% (.20).	49	
50	Figure the tax on the amount on line 27. Use the Tax Table or Tax Rate Schedules, whichever applies.	50	84,996.
51	Add lines 33, 37, 39, 47, 49, and 50.	51	317,900.
52	Figure the tax on the amount on line 21. Use the Tax Table or Tax Rate Schedules, whichever applies.	52	628,439.
53	Tax on all taxable income. Enter the smaller of line 51 or line 52 here and on Form 1040, line 41.	53	317,900.

*If lines 23 and 25 are more than zero, see Lines 31 and 43 on page D-9 for the amount to enter.

EXHIBIT S

Internal Revenue Service
Small Business and Self-Employed

Department of the Treasury

Date: June 26, 2006

Taxpayer Identification Number:

Form:

1040

Tax Period(s) Ended and Claim Amount:

December 31, 2000 \$842,782.00

Carl P. & Nancy C. Schlachte
906 Grey Fox Circle
Pleasanton CA 94566

Date Claim Received:

September 17, 2004

Person to Contact:

Elain Li

Contact Telephone Number:

510-637-2158

Employee Identification Number:

Last date to Respond to this Letter:

July 26, 2006

Dear Carl P. & Nancy C. Schlachte:

We examined your claim and propose:

- ☐ Partial disallowance, as shown in the enclosed examination report. If you accept our findings, please sign and return the enclosed Form 2297, *Waiver Form* and Form 3363, *Acceptance Form*.
- ☒ Full disallowance, as shown in the enclosed examination report or at the end of this letter. If you accept our findings, please sign and return the enclosed Form 2297, *Waiver Form* and Form 3363, *Acceptance Form*.
- ☐ Full disallowance with additional tax due, as shown in the enclosed examination report. If you accept our findings, please sign and return the enclosed Form 2297, *Waiver Form* and the examination report.

Note: If your claim involves a joint return, both taxpayers must sign the form(s).

If you are a "C" Corporation filer, Section 6621(c) of the Internal Revenue Code provides for an interest rate 2% higher than the standard interest rate on deficiencies of \$100,000 or more.

If you don't agree with our findings, you may request a meeting or telephone conference with the supervisor of the person identified in the heading of this letter. If you still don't agree with our findings, we recommend that you request a conference with our Appeals Office. If you request a conference, we will forward your request to the Appeals Office and they will contact you to schedule an appointment.

If the proposed change to tax is:

- \$25,000 or less for *each* referenced tax period; you may send us a letter requesting Appeals consideration, indicating what you don't agree with and the reasons why you don't agree.
- More than \$25,000 for *any* referenced tax period; you must submit a formal protest.

The requirements for filing a formal protest are explained in the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your *Rights as a Taxpayer* and the *IRS Collection Process*.

If you don't respond by the date shown in the heading of this letter, we will process your case based on the adjustments shown in the enclosed examination report or the explanations given at the end of this letter.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter. Thank you for your cooperation.

Sincerely yours,

Elain Li
Internal Revenue Agent

Enclosures:

☒ Examination Report

Form 2297

☒ Form 3363

Publication 3498

Envelope

Reason for Disallowance:

The claim of change in income in relate to the gain on the sale of securities is disallowed because we believe that the Stock Transaction is, in realty, a sale disguised as a loan.

1301 Clay Street, Suite 990s
Oakland CA 94612

Form **2297**
(Rev. March 1982)

Department of the Treasury-Internal Revenue Service

Waiver of Statutory Notification of Claim Disallowance

I, Carl P. and Nancy C. Schlachte, [REDACTED] of 906 Grey Fox Circle
 (Name, SSN or EIN) (Number, Street, City or Town, State, ZIP Code)

Pleasanton, CA 94566

waive the requirement under Internal Revenue Code section 6532(a)(1) that a notice of claim disallowance be sent to me by certified or registered mail for the claims for credit or refund shown in column (d), below.

I understand that the filing of this waiver is irrevocable and it will begin the 2-year period for filing suit for refund of the claims disallowed as if the notice of disallowance had been sent by certified or registered mail.

Claims

(a) Taxable Period Ended	(b) Kind of Tax	(c) Amount of Claim	(d) Amount of Claim Disallowed
December 31, 2000	Income	842,782.00	842,782.00

If you file this waiver for a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a partnership with excise or employment tax liability, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

Your Signature	→	_____	_____	(Date signed)
Spouse's Signature If A Joint Return Was Filed	→	_____	_____	(Date signed)
Taxpayer's Representative Sign Here	→	_____	_____	(Date signed)
Partnership/ Corporate Name:		_____	_____	
Partners/ Corporate Officers Sign Here	→	_____	_____	(Date signed)
	→	_____	_____	(Date signed)
	→	_____	_____	(Date signed)

NOTE - Filing this waiver within 6 months from the date the claim was filed will not permit filing a suit for refund before the 6-month period has elapsed unless a decision is made by the Service within that time disallowing the claims.

Department of the Treasury — Internal Revenue Service

Form **3363**
(Rev. November 1983)**Acceptance of Proposed Disallowance of Claim
for Refund or Credit**

Name(s), SSN or EIN, and address of taxpayer(s) (Number, Street, City or Town, State, ZIP Code)

Carl P. and Nancy C. Schlachte
906 Grey Fox Circle
Pleasanton, CA 94566

Year or Period	Date Claim Filed	Kind of Tax	Amount of Claim	Amount of Claim Disallowed	Amount of Claim Allowed
December 31, 2000		Income	100,000.00	100,000.00	

I accept the proposal of the Internal Revenue Service to disallow the claim(s) to the extent described above. This means only that I do not want the Service to consider the claim(s). It does not waive my right to file suit on the disallowance.

If you file this acceptance for a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

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For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

Your
Signature

(Date)

Spouse's Signature
If A Joint Return
Was Filed

(Date)

Taxpayer's
Representative
Sign Here

(Date)

Partnership/
Corporate
NamePartners/
Corporate
Officers
Sign Here

(Title)

(Date)

(Title)

(Date)

Form **3363**
(Rev. November 1983)

Department of the Treasury — Internal Revenue Service

Acceptance of Proposed Disallowance of Claim for Refund or Credit

Name(s), SSN or EIN, and address of taxpayer(s) (Number, Street, City or Town, State, ZIP Code)

Carl P. and Nancy C. Schlachte
906 Grey Fox Circle
Pleasanton, CA 94566

Year or Period	Date Claim Filed	Kind of Tax	Amount of Claim	Amount of Claim Disallowed	Amount of Claim Allowed
December 31, 2000		Income	100,000.00	100,000.00	

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For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

Your
Signature



(Date)

Spouse's Signature
If A Joint Return
Was Filed



(Date)

Taxpayer's
Representative
Sign Here



(Date)

Partnership/
Corporate
Name



Partners/
Corporate
Officers
Sign Here



(Title)

(Date)



(Title)

(Date)

Form **4549-A**
(Rev. March 2005)

Department of the Treasury-Internal Revenue Service

Income Tax Discrepancy AdjustmentsPage 1 of 2

Name and Address of Taxpayer Carl P. & Nancy C. Schlachte 906 Grey Fox Circle Pleasanton CA 94566		Taxpayer Identification Number [REDACTED]		Return Form No.: 1040
		Person with whom examination changes were discussed.	Name and Title: Brian G. Issacson	
1. Adjustments to Income		Period End 12/31/2000	Period End	Period End
a.				
b.				
c.				
d.				
e.				
f.				
g.				
h.				
i.				
j.				
k.				
l.				
m.				
n.				
o.				
p.				
2. Total Adjustments		0.00		
3. Taxable Income Per Return or as Previously Adjusted		2,439,807.00		
4. Corrected Taxable Income		2,439,807.00		
Tax Method		SCHEDULE D		
Filing Status		Joint		
5. Tax		938,114.00		
6. Additional Taxes / Alternative Minimum				
7. Corrected Tax Liability		938,114.00		
8. Less a.				
Credits b.				
c.				
d.				
9. Balance (Line 7 less total of Lines 8a thru 8d)		938,114.00		
10. Plus a.				
Other b.				
Taxes c.				
d.				
11. Total Corrected Tax Liability (Line 9 plus Lines 10a thru 10d)		938,114.00		
12. Total Tax Shown on Return or as Previously Adjusted		938,114.00		
13. Adjustments to: a.				
b.				
c.				
14. Deficiency-Increase in Tax or (Overassessment - Decrease in Tax) (Line 11 less Line 12 adjusted by Lines 13a thru 13d)		0.00		
15. Adjustments to Prepayment Credits-Increase (Decrease)				
16. Balance Due or (Overpayment) - (Line 14 adjusted by Line 15) (Excluding interest and penalties)		0.00		

Form 4549-A (Rev. March 2005)		Department of the Treasury-Internal Revenue Service Income Tax Discrepancy Adjustments		Page <u>2</u> of <u>2</u>
Name of Taxpayer Carl P. & Nancy C. Schlachte		Taxpayer Identification Number 222-641-8555		Return Form No.: 1040
17. Penalties/ Code Sections		Period End 12/31/2000	Period End	Period End
a.				
b.				
c.				
d.				
e.				
f.				
g.				
h.				
i.				
j.				
k.				
l.				
m.				
n.				
18. Total Penalties				
Underreporter attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.				
Underreporter attributable to fraud: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.				
Underreporter attributable to Tax Motivated Transactions (TMT). Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).		0.00		
19. Summary of Taxes, Penalties and Interest:				
a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)		0.00		
b. Penalties (Line 18) - computed to 06/26/2006				
c. Interest (IRC § 6601) - computed to 07/26/2006		0.00		
d. TMT Interest - computed to 07/26/2006 (on TMT underpayment)		0.00		
e. Amount due or refund - (sum of Lines a, b, c and d)		0.00		

Other Information:

On September 17, 2004, you filed Form 1040X for a refund of \$100,000.00 for 200012.
As the result of our examination, we have disallowed your claim.

Examiner's Signature: Name Elain Li	Employee ID: 94-06686	Office: Oakland	Date: 06/26/2006
---	------------------------------	------------------------	-------------------------

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest payments) if the tax remains unpaid after it has been assessed and four notices have been issued to you over a 120-day period.

Form 886-A	U.S. Treasury Department-Internal Revenue Service Schedule No. or Exhibit EXPLANATION OF ITEMS	
Name of Taxpayer Carl & Nancy Schlachte	Tax Identification Number [REDACTED]	Year / 200012

ISSUE:

Whether the "90% Stock Loan" transaction [hereinafter "Stock Transaction"] offered by Derivium constitutes an actual sale disguised as a loan¹ where:

1. Taxpayer transfers stock to Derivium, retaining no right to vote the stock, and receives 90% of the fair market value back as a loan payable over three years at an above market rate of interest; and,
2. Derivium immediately sells the stock, funding the loan on behalf of an offshore lender after the sale is completed.

FACTS:

Taxpayer is the owner of stock. Taxpayer enters into a transaction whereby the taxpayer transfers stock to Derivium for Derivium to hold as collateral for an offshore lender.

The "Master Agreement to Provide Financing and Custodial Services" [hereinafter "Master Agreement"] signed by the taxpayer and a representative of Derivium sets forth the rights of the parties as follows

Taxpayer understands that by transferring securities as collateral to DC² and under the terms of the Agreement, taxpayer gives DC and/or its assigns the right, without requirement of notice to or consent of the taxpayer, to assign, transfer, pledge, repledge, hypothecate, rehypothecate, lend, encumber, short sell, and/or sell outright some or all of the securities during the period covered by the loan. Taxpayer understands that DC and/or its assigns have the right to receive and retain the benefits from any such transactions and that taxpayer is not entitled to these benefits during the term of the loan. Taxpayer agrees to assist the relevant entities in completing all requisite documents that may be necessary to accomplish such transfers.³

¹ We use the term "loan" for convenience only and do not intend to suggest that the transaction qualifies as a true loan.

² In the Master Agreement, Derivium is referred to as "DC."

³ In paragraph 3, "Funding Of Loan", of the Master Agreement.

Form 886-A	U.S. Treasury Department-Internal Revenue Service Schedule No. or Exhibit EXPLANATION OF ITEMS	
Name of Taxpayer Carl & Nancy Schlachte	Tax Identification Number [REDACTED]	Year / 200012

On the maturity date of the transaction, the documents indicate taxpayer has six alternatives:

1. The first is to pay off the transaction, along with all accrued interest. Under this alternative, the taxpayer has the right to reacquire the same number of shares of the same securities.
2. When the value of the stock is less than the payoff due at maturity, taxpayer may pay a renewal fee, sign new paperwork and extend the transaction for an additional term of up to as much as forty years.
3. When the collateral value is worth more than the payoff due at maturity but 90% of the collateral value is worth less than the maturity amount, taxpayer may pay a renewal fee, sign new paperwork and extend the transaction for an additional term.
4. When 90% of the collateral value is more than the payoff due at maturity, taxpayer does not pay a renewal fee but does sign new paperwork, receives cash equal to the excess of 90% of the collateral value over the maturity amount and extends the transaction for an additional term.
5. If taxpayer does not wish to continue the transaction and his collateral value is worth more than the payoff due at maturity, he may "surrender" the stock and receive cash equal to the excess of collateral value over the payoff amount.
6. If taxpayer does not wish to continue the transaction and the collateral value is less than the payoff due at maturity, he may "walk away" and forfeit any remaining interest in the stock. Derivium can only proceed against the stock and not against the taxpayer personally because the transaction is non-recourse to the taxpayer.

Under any of these six alternatives, no Form 1099 is issued to the taxpayer.

Interest is set at above market rates, regardless of the year in which the transaction is undertaken, the prevailing market conditions or the stock. During the pendency of the transaction, taxpayer cannot pre-pay the transaction or the interest. Declared dividends are credited to interest due.

Form 886-A	U.S. Treasury Department-Internal Revenue Service Schedule No. or Exhibit EXPLANATION OF ITEMS	
Name of Taxpayer Carl & Nancy Schlachte	Tax Identification Number [REDACTED]	Year / 200012

Law & Government Position:

The Government's position is based upon the following relevant facts:

Legal Title

In the Stock Transaction, taxpayer transfers legal title of the stock to Derivium. When the stock is subsequently sold, Derivium is listed as the owner. However, the cases are clear that bare legal title is not sufficient in and of itself to constitute a transfer of beneficial ownership if the transferor retains the unrestricted right and ability to reacquire the stock. See, e.g. *Cruttenden v. U.S.*, 644 F.2d 1368 (9th Cir. 1981); *Lorch v. Commissioner*, 70 T.C. 674 (1978), *aff'd* 605 F.2d 647 (2d Cir. 1979), *cert. denied*, 444 U.S. 1076 (1980); *Miami National Bank v. Commissioner*, 67 T.C. 793 (1977). In the Stock Transaction, taxpayer's right to reacquire the stock is limited, as discussed below.

Treatment By The Parties

Both taxpayer and Derivium treat the stock as belonging to Derivium. Although the taxpayer retains the right to receive dividends during the period of the transaction, when taxpayer transfers legal title of the stock to Derivium, Derivium acquires the right to vote the shares and sell the shares.

In addition, taxpayer's right to reacquire the shares is not absolute. Taxpayer cannot pre-pay the transaction prior to maturity, therefore, taxpayer can only reacquire the shares at the maturity date of the transaction, after all outstanding transaction balances and accrued interest has been paid. Finally, Derivium's right to sell the shares is not limited in any way, unlike cases where the right to sell the shares was contingent on a particular event, usually the insolvency of the transferee. For example, in *Cruttenden, supra*, 644 F.2d at 1375, the Court made clear that the borrower of the stock had only a contingent right to sell the securities, and absent the occurrence of the contingency, the lender of the stock (e.g. the taxpayer) retained a significant right of ownership. Similarly, in *Miami National Bank, supra*, 67 T.C. at 801, the Tax Court found that the broker's power to dispose of stock was restricted to situations in which it was in financial difficulties, and that, in any event, the stock was never sold. Here, the stock was sold, not in response to any contingency, but rather, to fund the transaction.

Form 886-A	U.S. Treasury Department-Internal Revenue Service Schedule No. or Exhibit EXPLANATION OF ITEMS	
Name of Taxpayer Carl & Nancy Schlachte	Tax Identification Number [REDACTED]	Year / 200012

Acquisition of Equity

In the Stock Transaction, the documents show that Derivium does not fund the transaction until after confirmation of the amount of proceeds to be received from the sale of the stock. Thus, Derivium acquires equity in the stock as soon as the stock is transferred to it and then receives that equity in cash when the stock is sold.

Obligations of the Parties

The Master Agreement, as modified by one or more Schedules A, obligates the taxpayer to immediately transfer his stock to Derivium. Derivium is then obligated to pay 90% of the fair market value back to the taxpayer.

Right of Possession

The Master Agreement clearly states that Derivium will take possession of the stock and does so prior to selling it. Derivium may argue that taxpayer can reacquire possession of equivalent stock at the maturity date of the loan. However, taxpayer may do so only if taxpayer pays all balances and accrued interest. If the stock decreases in value, taxpayer will still have to pay the entire balance and accrued interest, not an economically feasible alternative. If a purported right to possession and control is burdened by a cumbersome cost that no reasonable person would pay, it is a façade. *Grodt & McKay Realty v. Commissioner, supra*, 77 T.C. at 1241-42. Thus, taxpayer has no realistic expectation of possession.

Risk of Loss

At the end of the term, if the stock has lost value, taxpayer may simply walk away from the loan, that is, forfeit the stock. Since the transaction is non-recourse, taxpayer has no personal liability. Thus, taxpayer has traded an unknown risk, the volatility of the market price, for a known payment, 10% of the stock's fair market value at the inception of the transaction. This fact distinguishes the Stock Transaction from *Grodt & McKay Realty*, *Miami National Bank*, *Cruttendon* and *Lorch*.

Form 886-A	U.S. Treasury Department-Internal Revenue Service Schedule No. or Exhibit EXPLANATION OF ITEMS	
Name of Taxpayer Carl & Nancy Schlachte	Tax Identification Number [REDACTED]	Year / 200012

Receipt of Profits

The Master Agreement provides that Derivium will receive dividends on the stock transferred to it by the taxpayer. The Schedule A which is used to memorialize specific Stock Transactions provides that all dividends will be credited against interest. The Stock Transactions utilize an above market rate of interest. It does not appear that the interest rate is tied in any way to prevailing market conditions. An analysis of market rates during the years 1998 through 2004, inclusive, shows that none of the rates reach as high as the Derivium rates. We believe that the interest rate is arbitrarily fixed at such a high level to account for any dividends and/or stock splits and to discourage repayment.

TAXPAYER'S POSITION:

Taxpayer disagreed due to taxpayer claimed that DC sold the stocks without his consent. Taxpayer truly believes that the whole transaction was a loan and taxpayer was planning to pay off loan at maturity so that he could acquire the stocks back.

CONCLUSION

Based on the above analysis of the relevant factors, we believe that the Stock Transaction is, in reality, a sale disguised as a loan. Adjustment is warranted per IRC Section 1001.

EXHIBIT T

12/28/2006 15:12 6177000674

BOSTON APPEALS

PAGE 02

Internal Revenue Service
Appeals Office
3310 El Camino Avenue
Suite 170
Sacramento, CA 95821-6318

Department of the Treasury

Person to Contact:
Ronald Cunningham
Employee ID Number: [REDACTED]
Tel: (916) 974-5821
Fax: (916) 974-5845

Date: **DEC 22 2006**

Refer Reply to:
AP:FW:SAC:RCC

CARL P. & NANCY C. SCHLACHTE
906 GRAY FOX CIRCLE
PLEASANTON, CA 94566-6921

In Re:
Income Tax Liability
Abatement Requested:
12/2000: \$842,782
Abatement Allowed:
None
Tax Period(s) Ended:
12/2000, 12/2003

Carl P. & Nancy C. Schlachte:

We are sorry, but we cannot allow the above request for an adjustment to your tax, for the following reasons: You failed to establish that your transactions with Derivium Capital in 2000 were not taxable as sales in that year. Accordingly, we have not made any adjustments to the tax liability you reported on your original amended return for 2000.

Our decision is based on provisions of the Internal Revenue laws and regulations. This letter is your legal notice that your request for abatement is fully disallowed.

If you wish to bring suit or proceedings for the recovery of any tax, penalties or other moneys for which this disallowance notice is issued, you will first have to pay the liability in full. (See Flora (S.Ct.) 362 US 145 (1960)) The United States District Court or the United States Court of Federal Claims cannot take jurisdiction of your case unless you have paid the tax in full and you have filed a refund claim with the IRS.

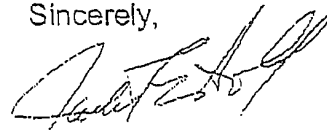
We have also processed your amended return for 2003. After assessment, you may wish to request that the government withhold collection for that period, pending the collection of your 2000 liability.

If you have any questions, please contact the person whose name and telephone number are shown above.

Enclosures:
Copy to Power of Attorney

cc: Brian G Isaacson

Sincerely,



Jack T. Estoll
Appeals Team Manager

EXHIBIT U

12/28/2006 15:12 617785574

BOSTON APPEALS

PAGE 02

Internal Revenue Service
Appeals Office
3310 El Camino Avenue
Suite 170
Sacramento, CA 95821-6318

Department of the Treasury

Person to Contact:
Ronald Cunningham
Employee ID Number: [REDACTED]
Tel: (916) 974-5821
Fax: (916) 974-5845

Date: DEC 22 2006

Refer Reply to:
AP:FW:SAC:RCC

CARL P. & NANCY C. SCHLACHTE
906 GRAY FOX CIRCLE
PLEASANTON, CA 94566-6921

In Re:
Income Tax Liability
Abatement Requested:
12/2000: \$842,782
Abatement Allowed:
None
Tax Period(s) Ended:
12/2000, 12/2003

Carl P. & Nancy C. Schlachte:

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If you wish to bring suit or proceedings for the recovery of any tax, penalties or other moneys for which this disallowance notice is issued, you will first have to pay the liability in full. (See Flora (S.Ct.) 362 US 145 (1960)) The United States District Court or the United States Court of Federal Claims cannot take jurisdiction of your case unless you have paid the tax in full and you have filed a refund claim with the IRS.

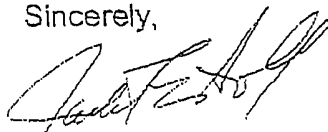
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If you have any questions, please contact the person whose name and telephone number are shown above.

Enclosures:
Copy to Power of Attorney

cc: Brian G Isaacson

Sincerely,



Jack T. Estoll
Appeals Team Manager

EXHIBIT V



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Appeals Area 8

Sacramento Sub Office
3310 El Camino Ave., Suite 170
Sacramento, CA 95821-6318

STEVEN M. GRAHAM
MERRIAM & ISAACSON
701 FIFTH AVE., SUITE 5800
SEATTLE WA 98104

Person to Contact:

Linda Hite, ID# [REDACTED]

Telephone Number:

(916) 974-5807, FAX 974-5845

Date:

January 16, 2007

In re: Carl P. & Nancy C. Schiachte's 2000 & 2003 1040

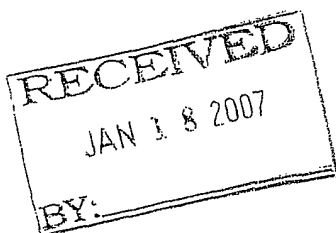
Dear Mr. Graham:

Thank you for your letter dated January 8, 2007. I am responding to the letter because Mr. Estoll is no longer the manager of Ronald Cunningham.

The determination on this case was reviewed and approved by Mr. Estoll and I see no reason to reopen said case to consider a redetermination. With respect to the assessment of the 2003 amended return, it is the Service's position that the income from the Derivium transaction belonged in 2000 and Appeals concurs with this position; however, you and your client believe the income should be reported on the 2003 return. Once the 2000 liability is paid Mr. and Mrs. Schlachte have the right to pursue the matter in court. It is possible that the court may concur with their position that the income should be reported in 2003. If the tax on the 2003 amended return was not assessed the government could be barred from collecting the tax in either year.

Clearly, the IRS cannot legally collect the tax on the same income twice. The revenue officer has been notified that the liability in 2003 is a duplication of the 2000 assessment. The Service would like to correct this situation and eliminate the 2003 assessment if your client wishes to send written assurance that this matter will not be pursued in court.

Thank you.



DD: _____
Calendared by: N/A
Original to: FILE
CC to: [REDACTED]
Scanned by: [REDACTED]
Filed by: [REDACTED]

Sincerely yours,

Linda Hite
Appeals Team Manager

EXHIBIT W

Internal Revenue Service
5104 N BLYTHE
FRESNO, CA 93722-6429

Department of the Treasury

CERTIFIED MAIL - RETURN RECEIPT

CARL P & NANCY C SCHLACHTE
906 GRAY FOX CIR
PLEASANTON, CA 94566-6921

Letter Date:
03/19/2007
Social Security or
Employer Identification Number
[REDACTED]
Person to Contact:
MARILYN COLLINS
Contact Telephone Number:
(559)452-3058
Employee Identification Number:
[REDACTED]
For Account of:
CARL P & NANCY C SCHLACHTE

**FINAL NOTICE
NOTICE OF INTENT TO LEVY AND NOTICE OF YOUR RIGHT TO A HEARING
PLEASE RESPOND IMMEDIATELY**

Your Federal tax is still not paid. We previously asked you to pay this, but we still haven't received your payment. This letter is your notice of our intent to levy under Internal Revenue Code (IRC) Section 6331 and your right to receive Appeals consideration under IRC Section 6330.

We may file a Notice of Federal Tax Lien at any time to protect the government's interest. A lien is a public notice to your creditors that the government has a right to your current assets, including any assets you acquire after we file the lien.

If you don't pay the amount you owe, make alternative arrangements to pay, or request Appeals consideration within 30 days from the date of this letter, we may take your property, or rights to property, such as real estate, automobiles, business assets, bank accounts, wages, commissions, and other income. For more information, we've enclosed Publication 594, *What You Should Know About the IRS Collection Process*, Publication 1660, *Collection Appeal Rights*, and Form 12153, *Request for a Collection Due Process Hearing*. To preserve your right to contest Appeals' decision in the U.S. Tax Court or U.S. District Court, you must send us the completed Form 12153 within 30 days from the date of this letter.

To prevent collection action, please send your full payment today. To ensure that you and your spouse receive this letter, we are sending a copy to each of you. Each copy contains the same information related to your joint account. Any amount you owe should be paid only once. Make your check or money order payable to U.S. Treasury. Write your social security number or employer identification number on your payment. Send your payment to us in the enclosed envelope with a copy of this letter.

The unpaid amount from prior notices may include tax, penalties, and interest you still owe. It also includes any credits and payments we've received since we sent our last notice to you. Below is a brief explanation of the interest and/or failure to pay penalty that may be included in the amount you owe:

Interest - Internal Revenue Code Section 6601


We charge interest when your tax is not paid on time. Interest is computed from the due date of your return (regardless of extensions) until paid in full or to the date of this notice. Interest is also charged on penalties assessed on your account. Interest compounds daily except on underpaid estimated taxes for individuals or corporations.

Paying Late - Internal Revenue Code Section 6651(a)(2)

We charge a penalty when your tax is not paid on time. Initially, the penalty is $\frac{1}{2}\%$ of the unpaid tax for each month or part of a month the tax was not paid.

If you have recently paid this tax or you can't pay it, call us immediately at the telephone number shown at the top of this letter and let us know.

Sincerely yours,


MARILYN COLLINS
REVENUE OFFICER

The amount you owe through 03/29/2007 is:

Form Number	Tax Period	Unpaid Amount from Prior Notices	Additional Penalty	Additional Interest	AMOUNT YOU OWE
1040	12/31/2003	\$105127.96	\$2000.00	\$2094.11	\$109222.07
Total:					\$109222.07

enclosures:
copy of this letter
publication 594
publication 1660
form 12153

EXHIBIT X

PAYMENT POSTING VOUCHER

(Not a taxpayer receipt)

DLN:

TIN: ~~XXXXXXXX~~

Name Control: SCHL

Form No.: 1040

Tax Period (YYYYMM): 200012

MFT: 30

Transaction (Rec'd) Date (MM/DD/YYYY): 06/20/2007

Taxpayer Name: CARL P & NANCY C SCHLACHTE

City:

Address: 906 GRAY FOX CIR

State:

PLEASANTON, CA 94566-6921

Zip:

Debit Transaction (Only 1)			Credit Transactions (Maximum of 2)				Remarks:
Code	Description	Amount	Code	Description	Amount	DPC	
170	ES Penalty		670	Subsequent Payment	860,399.95	99	FIDELITY TITLE CERT FUNDS
180	FTD Penalty		610	Remittance with Return			
200	Taxpayer ID No. Penalty Assessment		620	Payment for Form 7004			
270	Manual Failure to Pay Assessment		640	Advance Payment on deficiency			
360	Fees and collection cost		430	Est. tax payment Form 1040-ES			
570	Additional Liability Pending		660	Est. tax payment Form 1041-ES			
			680	Designated interest			
			690	Designated Payment of Penalty			
			694				
			Total Payment		860,399.95		

Unit Symbol: 27061367

Preparer: MARILYN COLLINS

Phone No.: (559)452-3058x

Form 3244 (Rev. 6-2000) Internal Revenue Service

Department of the Treasury

THIS MULTI-TONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM.

CASHIER'S CHECK 10745003432

UNION BANK OF CALIFORNIA, N.A.
SAN FRANCISCO, CALIFORNIA
800-236-4486
47813 096

860,399.95

Eight Hundred Sixty Thousand Three Hundred Ninety Nine Dollars And Ninety Five Cents June 19, 2007

PAY TO THE ORDER OF: Internal Revenue Service (Ref Escrow# 883204)

REMITTER: Fidelity National Title

\$ ***860,399.95**

FORM 00256-T3 (08/23/2003)

Overlay ID: 00247-T3 (04/2007)

⑈0745003432⑈ ⑆121000497⑆ 0566000006⑈

Form **10492**
(Rev. January 2005)

Department of the Treasury-Internal Revenue Service

Notice of Federal Taxes Due

Escrow or Docket Number

I.MESTER

To (Name of Escrow Holder, Agent of Taxpayer or Fiduciary)

NORTHERN TRUST NA

Amount due

\$ 860,399.95

Address (Number, Street, P.O. Box, City, State, Zip code)

16 CORPORATE PLAZA

NEW PORT BEACH, CA 92660

You are hereby notified that there is now due, owing, and unpaid from -- (Name and Address of Taxpayer)

CARL P & NANCY C SCHLACHTE

906 GREY FOX CIRCLE, PLEASANTON, CA 94566-3450

to the United States of America, the sum of EIGHT HUNDRED SIXTY THOUSAND THREE HUNDRED NINETY NINE DOLLARS & NINETY FIVE CENTS

for Internal Revenue taxes secured by a lien pursuant to Internal Revenue Code (IRC) Sections 6321 and 6322, or the Estate Tax Lien arising under IRC Section 6324, from the date of each assessment.

Kind of Tax and Period	Taxpayer EIN or SSN	Assessment Date	Unpaid Assessed Balance	Accrued Interest	Accrued Late Payment Penalty	TOTAL
FORM 1040 12-31-2000	XXXXXXXXXX	04-15-2004	\$769,765.05	\$90,634.90		\$860,399.95

This demand was requested by an employee of Fidelity National Title, and received directly from the issuing lender or party entitled to issue same.

By: [Signature] Date: 6/19/07

Date after which additional interest will be charged

06-22-2007

Dated at Fresno, CA 93722 this 13th day

If a Notice of Federal Tax Lien(s) has been recorded, a *Certificate of Release of Federal Tax Lien* will be filed immediately *only if* payment is made in cash or by either a certified, cashier's, or treasurers check. The check must be drawn on any bank or trust company incorporated under the laws of the United States, or of any state or possession of the United States. Payment also can be made by a United States postal, bank, express, or telegraph money order. If you pay by personal check, issuance of the certificate of release will be delayed until the bank honors the check.

Caution to Fiduciaries: For personal liability for failure to honor priority of debts due the United States, see Sections 3466 and 3467 of the revised statutes (31 U.S.C. 191, 192).

Please make payment payable to United States Treasury and send it to the Internal Revenue Service at the address below.

By (Name) Marilyn Collins	Title ATAT Revenue Officer	ID Number XXXXXXXXXX	Telephone number (559) 452-3058
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Address (Number, Street, P.O. Box, City, State, Zip code)

Internal Revenue Service

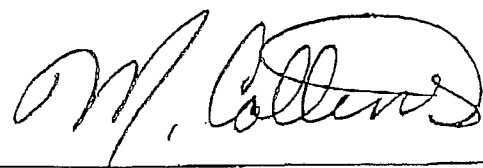
5104 North Blythe Ave., Ste.206

Fresno, CA 93722

ATTN: Marilyn Collins 27061367

Signature

Marilyn Collins


Catalog Number 657107
7 1 2 6 2 6 7 0 0 0

CST

Form-10492 (Rev. 1-2005)
MAY 1 2007 01 1000